



Via Email and Fed-Ex

July 11, 2016

Lilian Dorka, Deputy Director, Acting Assistant Director  
Office of Civil Rights  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1201-A  
Washington, DC 20460

**Re: Title VI Civil Rights Complaint and Petition for Relief or Sanction by North Carolina Environmental Justice Network, REACH, and Waterkeeper Alliance, Inc., Against North Carolina Department of Environmental Quality (EPA OCR File No. 11R-14-R4): Intimidation**

Dear Interim Director Dorka,

This letter is intended to request that the Office of Civil Rights ("OCR") investigate a claim that the North Carolina Department of Environmental Quality ("DEQ"), directly and through the actions of the North Carolina Pork Council and National Pork Producers Council ("Pork Councils") have engaged in and failed to protect Complainants from intimidation, which is prohibited by Title VI and EPA regulations, 40 C.F.R. § 7.100. Members of affected communities in Eastern North Carolina have long been subject to an atmosphere of intimidation by swine facility operators, trade associations such as the Pork Councils and, ultimately, DEQ, formerly the North Carolina Department of Environment and Natural Resources ("DENR"), by its actions and inaction. The most recent specific incident occurred on January 13, 2016, when, apparently at DEQ's invitation and with no notice to North Carolina Environmental Justice Network ("EJ Network"), Rural Empowerment Association for Community Help ("REACH") and Waterkeeper Alliance, Inc. (collectively, "Complainants"), representatives of the Pork Councils showed up at the first session of confidential mediation between Complainants and DEQ. Given Complainants' clear opposition to the Pork Councils' participation in mediation and the manner in which both the Pork Councils' representatives and DEQ behaved, these actions could only have been intended to intimidate. We ask that OCR immediately ensure that DEQ put into place measures to protect against intimidation in its permitting program, consistent with DEQ's obligations pursuant to 40 C.F.R. § 7.35(a), and that OCR fully investigate the specific incident of intimidation on January 13, 2016 described in this letter.

We bring this intimidating conduct to your attention for two reasons. First, this is further evidence of DEQ's inability or unwillingness to address civil rights complaints and to ensure that members of the public are able to raise those concerns safely.

Second, intimidation is prohibited by Title VI and EPA regulations. *See* 40 C.F.R. § 7.100. We request that OCR investigate whether DEQ has violated Title VI and its regulations, which establish that it is unlawful for anyone—an applicant for federal funds, a recipient of federal funds, or an “other person”—to “intimidate, threaten, coerce, or discriminate against any individual or group” for opposing discriminatory conduct or for participating in a Title VI process. *Id.* Intimidation tactics faced by complainants in this case have risen to this level.<sup>1</sup>

The importance of enforcing the anti-intimidation component of EPA’s Title VI regulations cannot be overstated. As an Administrative Law Judge at the U.S. Department of Education stated in an opinion upholding the Department of Education’s jurisdiction over a retaliation claim asserted by a complainant exercising rights under Title VI,

If OCR were unable to offer broad protection to individuals who exercise their rights..., the effectiveness of the statute and the regulations would be severely hampered. Individuals would be discouraged from engaging in any protest activity aimed at encouraging voluntary compliance with the law. Potential complainants might be intimidated into withholding information from OCR or providing false information under the threat of retaliation. OCR’s enforcement process would be compromised and a full and fair inquiry into any alleged discriminatory activity could be hampered.

*Capistrano Unified Sch. Dist.*, 75 Ed. Law Rep. 1396, 1420 (Dep’t of Educ. Apr. 30, 1992).

## **I. EPA REGULATIONS PROHIBIT INTIMIDATING CONDUCT.**

EPA’s Title VI regulations explicitly prohibit intimidation:<sup>2</sup>

Intimidation and retaliation prohibited

---

<sup>1</sup> Complainants focus this letter on the *prima facie* case against DEQ, which has engaged in acts of intimidation directly and “through contractual, licensing, and other arrangements.” *See* 40 C.F.R. § 7.35 (a) (prohibiting discrimination “directly or through contractual, licensing, or other arrangements”). EPA’s regulations also prohibit intimidation by “other persons,” such as the Pork Councils, where such intimidation interferes with the exercise of rights under Title VI and EPA regulations. *Id.* § 7.100. EPA’s regulations specifically forbid intimidation by any person against individuals or groups that have “filed a complaint,” testified or “participated in any way in an investigation, proceeding or hearing” to enforce Title VI and its regulations, or that have otherwise “opposed any practice made unlawful” by EPA’s Title VI regulations. *Id.* § 7.100(b). DEQ cannot evade review by pointing to the involvement of third parties in the intimidating and retaliatory conduct.

<sup>2</sup> EPA’s regulations prohibit both “intimidation” and “retaliation”, which together include intimidation, threats, coercion and discrimination. 40 C.F.R. § 7.100. The allegations herein focus on intimidating conduct – that is, actions that cause people to be afraid and/or act to compel or deter protected activities. *See* Merriam-Webster, Simple Definition of Intimidate, <http://www.merriam-webster.com/dictionary/intimidate> (last visited July 11, 2016) (defining intimidate as “to make (someone) afraid”).

No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:

- (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or
- (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.

40 C.F.R. § 7.100. Moreover, Title VI and its regulations establish that DEQ cannot engage in prohibited activities such as intimidation “directly or through contractual, licensing, or other arrangements....” *Id.* § 7.35(a).<sup>3</sup>

As the Title VI Legal Manual published by the Department of Justice (“DOJ”) sets forth, “[a] complainant may bring a retaliation claim under Title VI or under a Title VI regulation that prohibits retaliation.” Department of Justice, Title VI Legal Manual § VIII(C) (Retaliation), available at <https://www.justice.gov/crt/title-vi-legal-manual#Retaliation> (last updated Aug. 6, 2015).

A *prima facie* case of prohibited retaliation or intimidation includes the following four elements:

- (1) that [the complainant] engaged in a protected activity, (2) that the recipient knew of the complainant’s protected activity, (3) that the recipient took some sort of adverse action against the complainant, and (4) that there was a causal connection between the complainant’s protected activity and the recipient’s adverse actions.

*Id.*, citing *Davis v. Halpern*, 768 F. Supp. 968, 985 (E.D.N.Y. 1991) (Defendant’s summary judgment motion to dismiss Title VI retaliation claim denied because plaintiff established evidence of *prima facie* case).

In this case, Complainants filed a complaint under Title VI of the Civil Rights Act of 1964 and EPA regulations, a protected activity pursuant to 40 C.F.R. § 7.100 (a) and (b). Following

---

<sup>3</sup> Effective January 23, 2013, EPA has required that grant recipients, including DEQ, acknowledge that they have “an affirmative obligation to implement effective Title VI compliance programs.” U.S. Env’tl. Prot. Agency, Civil Rights Obligations at 2 (Jan. 25, 2013), available at [http://www.enviro-lawyer.com/Civil\\_Rights\\_Obligations.pdf](http://www.enviro-lawyer.com/Civil_Rights_Obligations.pdf). Any effective compliance program must include measures to identify, prevent and resolve interference with the exercise of rights under Title VI and EPA regulations. Recipients such as DEQ must further “be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how [they] [are] meeting [their] Title VI obligations.” *Id.*

acceptance of the Complaint, Complainants explored and then engaged in voluntary Alternative Dispute Resolution (ADR), from approximately March 2015, when Complainants and DEQ agreed to ADR, until March 2016. The Complainants have also assisted in the investigation by providing declarations and supplementary material. All of these steps constitute protected activity.

There is no doubt that both DEQ and the Pork Councils had actual knowledge of the protected activity: complainants sent DEQ a copy of the Complaint on or about September 3, 2014, and the Pork Councils filed papers on December 18, 2015 seeking to intervene in the investigation and mediation. *See* Letter from Thomas Brugato & Benne C. Hutson, on behalf of Pork Councils, to Velveta Golightly-Howell, Dir., EPA OCR (Dec. 18, 2015), attached hereto as Ex. 1; *see also* Letter from Thomas Brugato & Benne C. Huston, on behalf of Pork Councils, to Velveta Golightly-Howell, Dir., EPA OCR (Feb. 19, 2016), attached hereto as Ex. 2.

DEQ and the Pork Councils engaged in acts of intimidation, *see infra* at II, and interfered with the exercise of Complainants' rights.

Finally, there is clearly a causal connection between the assertion of rights by Complainants and the acts of intimidation by DEQ and the Pork Councils; indeed, the Pork Councils' surprise intrusion into ADR on January 13, 2016, with the approval of DEQ, caused Complainants fear and is inextricably intertwined with this assertion of rights. The DEQ and Pork Councils' actions on January 13, 2016 made clear to Complainants that the agency obligated to protect their communities and the environment from the industry's adverse impacts has and will continue to forsake those obligations for the industry's interests. Without consequence from EPA, those actions undermine the assertion of rights (including through the ADR process).

The remainder of this letter will summarize DEQ's affirmative involvement in intimidating acts on January 13, 2016 as well as its responsibility for those acts based on DEQ's failure to maintain a program that protects Complainants from interference in the exercise of their rights. The letter will then offer background information about the context for these events – that is, the intimidating atmosphere in Eastern North Carolina, which has been exacerbated over time by DEQ's long-standing failure to take effective action to protect the rights of community members.

## **II. JANUARY 13, 2016 INTIMIDATION BY DEQ DIRECTLY AND THROUGH ITS CONTRACTING, LICENSING AND OTHER ARRANGEMENTS.**

In March 2015, Complainants agreed voluntarily to participate in ADR with DEQ, in an attempt to resolve the issues raised in their Complaint. It was Complainants' understanding that the ADR process was confidential and that even the conversations involved in the convening



process were confidential in accordance with the Administrative Dispute Resolution Process Act of 1996, 5 U.S.C. § 574.<sup>4</sup> EPA's own website describes confidentiality in ADR as a "procedural safeguard" to protect the interests of participants in a Title VI complaint EPA, Frequently Asked Questions about the Use of Alternative Dispute Resolution in Resolving Title VI Complaints, <https://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi> (last updated Feb. 19, 2016). Two sections of this document are applicable. First, in response to the question "What procedural safeguards exist in ADR?", the FAQ indicates that a mediator works with the parties to establish ground rules about confidentiality and other issues and that all participants in mediation must abide by the ground rules. *Id.* Second, in response to a question focused, particularly, on confidentiality, the FAQ states:

Confidentiality is a critical component of successful ADR processes. Confidentiality protections provided by federal and state laws allow the participants in the ADR process to freely engage in candid, informal discussions about their interests to reach the best possible resolution. Confidentiality allows participants to speak openly without the need for posturing or fear that statements made during an ADR process will be used against them later. At the same time, the public may have an interest in particular Title VI complaints. Thus, the complainant and recipient should work with their mediator or facilitator to craft rules regarding confidentiality in the ADR process....

*Id.* Complainants had strong reservations about keeping the fact of mediation confidential, given that Complainants have partners, members, constituencies and boards to which they are accountable. See Declaration of (b) (6) Privacy, (b) (7) at ¶ 16 (June 30, 2016), attached hereto as Ex. 3. Nonetheless, Complainants were willing to abide by terms requiring the parties to keep both the fact and content of mediation confidential until the first mediation session, when confidentiality could be the subject of discussion and negotiation. See *id.* at ¶ 17.<sup>5</sup>

On December 18, 2015, the Pork Councils filed papers with EPA seeking to "intervene" in the administrative complaint filed by Complainants and, surprisingly, in the mediation. See Ex. 1. To Complainants' knowledge, neither Complainants nor the mediator informed the Pork Councils about the mediation and it is likely that DEQ conveyed this information. To Complainants' knowledge, DEQ did not respond to the Pork Councils' request to EPA, but Complainants sent a response to EPA strongly objecting to the Pork Councils' attempt to intrude in the administrative process and urging EPA to reject their request in a timely way. See Letter from Marianne Engelman Lado, Sr. Staff Att'y, Earthjustice & Elizabeth Haddix, Sr. Staff

---

<sup>4</sup> Section 574 of the Administrative Dispute Resolution Act of 1996 limits the disclosure of communication by the neutral to a dispute, as well as by the parties. In any given mediation, additional restrictions under state law, including those applicable to executive agencies within the state, may also apply.

<sup>5</sup> Complainants seek OCR guidance on the availability of a process for submitting evidence from the ADR process supporting Complainants' belief that DEQ was aware that the Parties were under an obligation to keep both the fact and content of mediation confidential.

Att’y, Univ. of N.C. Ctr. for Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 5, 2016), attached hereto as Ex. 4. Complainants explicitly rejected participation by the Pork Councils in ADR:

[N]either Title VI nor EPA’s implementing regulations provide authority for the Pork Council to have a role in the ADR process unless complainants and the recipient consent.... Complainants agreed to participate in ADR under the terms established by EPA. Notwithstanding the Pork Councils’ reliance on the 1998 Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits suggesting that OCR “may” seek participation from “others” in a resolution process...the following description of the ADR process offered by EPA’s Interim Case Resolution Manual is consistent with the information provided by EPA through the process:

EPA OCR’s Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations *between the complainant and recipient*, through the use of a professionally trained mediator.... As appropriate, the EPA may offer *the complainant and the recipient* an opportunity to engage in the ADR process at any stage in the complaint process....

The process is voluntary, and absent mutual agreement by the parties – which has certainly not occurred here – the Pork Councils have no seat at the table.

Ex. 3 at 4 (emphases in original). In response to yet another letter brief by the Pork Councils sent to EPA, *see* Ex. 2, Complainants reiterated their unequivocal opposition to the Pork Councils’ request for official status in the administrative proceeding and ADR. Letter from Marianne Engelman Lado, Earthjustice & Elizabeth Haddix, Univ. of N.C. Ctr. on Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 11, 2016), attached hereto as Ex. 5.<sup>6</sup>

The Parties and mediator planned to meet at the offices of the UNC School of Law Center for Civil Rights (“CCR”) in Chapel Hill, North Carolina, on January 13, 2016 for two days of negotiation. Representatives for Complainants included their attorneys and (b) (6) from the EJ Network, (b) (6) Privacy, from REACH, and (b) (6) Privacy, (b) (7)(C) from Waterkeeper Alliance. On information and belief, neither the Pork Councils nor DEQ informed Complainants in advance that the Pork Councils knew the time and place of ADR, nor that representatives of the Pork Councils planned to attend. When Complainants arrived at the CCR offices for the first mediation session on January 13<sup>th</sup>, they learned that representatives of the Pork Council were in the parking lot. *See* Decl. of (b) (6) Privacy, (b) (7) at

---

<sup>6</sup> OCR rejected the Pork Councils’ request for official status on January 15, 2016. Letter from Velveta Golightly-Howell, Dir., OCR to Gerald Yamada et al. (Jan. 15, 2016).

¶ 23. Their presence, as well as the lack of notification, was anxiety-producing for Complainants. (b) (6) Privacy, (b) (7)(C) Personal worried, for example, about whether the representatives from the Pork Councils might be gathering information about the identities of participants. *Id.* ¶ 24.

Ultimately, five representatives from the Pork Councils came into the building – including Benne Hutson, an attorney for the North Carolina Pork Council from McGuire Woods, LLP,<sup>7</sup> who had apparently traveled from Charlotte, North Carolina, for this purpose, one or two attorneys for the National Pork Producers from Covington & Burling LLP, who had apparently traveled from Washington, D.C., Michael Formica, Chief Environmental Counsel for the National Pork Producers, who had also apparently traveled from Washington, D.C., and two other representatives, and demanded to participate over the objections of Complainants.<sup>8</sup> Representatives of DEQ admonished Complainants about opposing their participation and argued that the Pork Councils should be included in the mediation session, clearly communicating to Complainants that they supported the Pork Councils' engagement. Decl. of Naeema Muhammad at ¶ 26; *see also* Ex. 2 at 1–2 (referring to “NCDEQ’s statements to the mediator in support of the Councils’ participation.”). Representatives from the Pork Councils resisted requests by counsel for Complainants that they leave the building, and instead asked to be seated in a conference room. Ultimately, the Pork Councils’ intrusion disrupted ADR: it delayed the start of ADR by nearly two hours and generated an atmosphere of distrust. Moreover, despite requests that they leave the building, Pork Council representatives remained in the hallway as negotiations began, all countenanced by DEQ. *See* Photograph of Pork Council representatives (Jan. 13, 2016), attached hereto as Ex. 6. Neither DEQ nor the Pork Councils had any basis for believing that Complainants would allow the Pork Councils to participate voluntarily, and they should have known that the surprise intrusion of the Pork Councils’ representatives would be unwelcome and intimidating to Complainants, creating fear and uncertainty.

---

<sup>7</sup> Benne Hutson has been influential with North Carolina’s state legislature and, particularly, at DEQ. A bio appearing on the McGuire Woods website provides information about his leading role in the state’s environmental regulatory system: “In 2012, the North Carolina Speaker of the House appointed Benne to the state’s environmental management commission, which is responsible for all air, water and waste regulations in the state. In 2013, Governor Pat McCrory appointed Benne chairman of the commission. Benne served on the Commission until January 2015.” McGuireWoods, Benne C. Huston, <https://www.mcguirewoods.com/People/H/Benne-C-Hutson.aspx?pdf=1>.

<sup>8</sup> *See* Ex. 2 at 1 (“Client representatives for each Council as well as outside counsel were present and traveled substantial distances to attend....”).

### III. BACKGROUND: A PERVERSIVE ATMOSPHERE OF INTIMIDATION AND DEQ'S HISTORIC FAILURE TO PROTECT THE RIGHTS OF THE AFFECTED POPULATION IN EASTERN NORTH CAROLINA.

The January 13, 2016 event should be viewed in its context. For years, residents of Eastern North Carolina have raised concerns about the adverse impacts of industrial swine operations,<sup>9</sup> and more specifically, about the disparate impact of these facilities on the basis of race and national origin<sup>10</sup> and the atmosphere of intimidation that has served as a barrier for members of the community to assert their rights. Over these many years and continuing to today, DEQ has failed to take action to protect community members against retaliation or intimidation.

The context for raising concerns about intimidation is relevant. Eastern North Carolina, home to the counties where the density of hog operations is greater than anywhere else in the United States, is also home to a large population that has historically been disproportionately disenfranchised and remains disproportionately low-income.

Indeed, as Dr. Steve Wing has reflected, there is a strong correlation between the location of industrial hog farms to the density of slave populations in the 1860s. See Laura Orlando, *The Legacy of Slavery: What Inequality and Industrial Hog Operations Have in Common*, In These Times, May 19, 2015, <http://inthesetimes.com/rural-america/entry/17771/what-industrial-hog-operations-and-inequality-have-in-common>. As described by Dr. Wing, racial injustice and inequality are closely associated with today's conditions: "If workers and residents in rural communities that are most directly impacted had basic political and human rights, industrial agriculture would not have developed with such destructive force because those affected by its side effects would have been able to protect themselves." *Id.* According to the U.S. Census, in Duplin County, which boasts of more pigs per person than any other county in the country, the poverty rate exceeds 27%, as compared to 17.2% for the state as a whole. See U.S. Census Bureau, QuickFacts, Duplin County, North Carolina, <http://www.census.gov/quickfacts/table/IPE120214/37,37061,00> (enter "North Carolina" and "Duplin County" into search bar, find "Income and Poverty" data, and "Persons in poverty, percent").

The atmosphere of intimidation, which includes fear of both economic and physical harm, has been pervasive in areas such as Duplin County. Murphy-Brown, a regional powerhouse in the

---

<sup>9</sup> See, e.g., Joby Warrick & Pat Stith, *North Carolina's Booming Hog Industry is Generating Tax and Revenue. But Some Residents Say the Cost is Too High*. Raleigh News & Observer, Feb. 24, 1995 (part of the Pulitzer Prize winning Boss Hog series on the rise of the industrialized hog industry in eastern North Carolina, including concerns raised by people who live near hog facilities).

<sup>10</sup> See, e.g., NCEJN, *The Rest of the Story*, available at <http://ncejn.org/> (interview with Cindy Watson, state representative 1995–1998, who heard community concerns); Declaration of (b) (6) (Aug. 30, 2014), at ¶¶ 6–10, originally submitted with Complaint and attached hereto as Ex. 7 (efforts (b) (6) REACH to create opportunities for residents to testify about the impacts of hog farms and engage in collaborative problem solving with government and industry representatives from 2005 to the present).



pork and poultry sectors, is the leading employer in the county, and the animal industry accounts for three of the top four employers. Duplin County, Major Employers, <http://www.duplincountync.com/aboutDuplinCounty/majorEmployers.html> (last accessed July 8, 2016). To cite but a few examples, (b) (6) Privacy, (b) (7)(C) P, a (b) (6) Privacy, (b) (7)(C) P African American resident of Duplin County, personally experienced intimidation. (b) (6) Privacy, (b) (7)(C) P lives within two miles of ten hog facilities. Though her family had hogs when she was growing up in the region, the impact of industrial hog facilities has adversely affected her life. At one point her water was tested and she was told by a state agency to stop drinking the water. After her water was tested, however, one of the hog famers living near her found out about the results. She couldn't be sure who told the famer about the tests, but, as (b) (6) Privacy, (b) (7)(C) P stated, "[T]hat farmer came back with their industry spokesperson and asked me a lot of questions as if they were trying to make it seem like I was out to get the hog farmer." Declaration of (b) (6) Privacy, (b) (7)(C) P (Sept. 2, 2014), at ¶ 7, originally submitted with Complaint and attached hereto as Ex. 8. (b) (6) Privacy, (b) (7)(C) P describes being upset and feeling vulnerable. She describes feeling like the men were "trying to take advantage" of her. *Id.*

Another community member, (b) (6) Privacy, (b) (7)(C) P, also recounts the futility of filing complaints with DEQ and retaliation by the grower whose sprayfields abutted the (b) (6) Privacy, (b) (7)(C) P family property. Declaration of (b) (6) Privacy, (b) (7)(C) P (Apr. 18, 2014), at ¶¶ 15–20, originally submitted with Complaint and attached hereto as Ex. 9. (b) (6) Privacy, (b) (7)(C) P received a letter from a lawyer associated with the hog industry threatening her with jail time if she continued to complain, and she and her mother were subject to threats of physical violence. *Id.* ¶¶ 17–18; see also N.C. Env'tl. Justice Network, ...*The Rest of the Story: Corporate Hog Production in North Carolina* at 4:40, YouTube (Jan. 9, 2013), <https://www.youtube.com/watch?v=ReMXawj4oK8> (intimidation and harassment of Herring family, including a threat that if (b) (6) Privacy, (b) (7)(C) P continued to complain, the grower would sue her, that the grower violently shook her elderly mother, and that the grower blocked her car on the road); Steve Wing, *Social Responsibility and Research Ethics in Community-Driven Studies of Industrialized Hog Production*, 110 Env'tl. Health Persp. 437, 443 (2002), attached hereto as Ex. 10 (referencing *Wilmington Star* report that two Duplin County residents who publicly opposed industrial hog production became concerned about their jobs when Murphy Farms representatives contacted their supervisors).

Notably, information released by Murphy-Brown, LLC in discovery in a nuisance lawsuit, *Gillis v. Murphy-Brown, LLC*, No. 7:14-CV-00185-BR (E.D.N.C. Third Amended Complaint filed July 3, 2015), demonstrates that (b) (6) Privacy, (b) (7)(C) P continue to be targeted in some manner for attention by Murphy-Brown. See E-mail from Gary Pearce, to Keira Lombardo, Senior Vice President of Corporate Affairs, Smithfield Foods, Inc., et al. (Aug. 24, 2015, 2:58 PM), attached hereto as Ex. 11 (listing (b) (6) Privacy, (b) (7)(C) P info and strategy" on agenda for call with representatives from Smithfield, the North Carolina Pork Council, and North Carolina Farm Families).

(b) (6) Privacy, (b) (7)(C) Personal Privacy of the EJ Network describes the intimidating atmosphere in which community members live and work, "which makes it

more difficult to speak up about the problems they face.” Decl. of (b) (6) Privacy, (b) (7) at ¶ 4. Given the weakness of the local economy and reliance of families on the animal industry, (b) (6) Privacy, (b) (7) (C) Personal believes that “people in the community are worried that if they speak out, their family members may lose their jobs.” *Id.* ¶ 5. To (b) (6) Privacy, (b) (7) (C) Personal the history of racial intimidation and oppression in Eastern North Carolina has a continuing effect on relations and power in the community today, and “it remains hard for African Americans to speak out, particularly in low-income communities.” *Id.* ¶ 6. Over time, officials from DENR and now DEQ attended meetings pulled together by REACH and by the EJ Network, which (b) (6) Privacy, (b) (7) (C) Personal also attended, and heard complaints both about the impacts of industrial hog operations and the atmosphere of intimidation. To her knowledge, DEQ failed to take any action to address acts of intimidation. *Id.* ¶¶ 7–8. To the contrary, DEQ employees in regional offices, which receive complaints from the public about whether animal operations are complying with DEQ’s standards, on at least one occasion placed a call to an animal operation (which they are supposed to regulate) to notify it that a community member lodged a complaint. *Id.* ¶ 8. (b) (6) Privacy, (b) (7) (C) Personal recounts the experience of REACH (b) (6) Privacy, (b) (7) (C) Personal who after calling DENR to make a complaint, received a phone call from the operator of the hog facility, who phoned to talk about his complaint. *See id.* To the knowledge of Complainants, DEQ has acted with disregard for the confidentiality of community members and to the present has failed to investigate or protect community members from threats and intimidation.

Individual growers and the pork industry, though its trade organizations the Pork Councils, have tried to intimidate community members directly and through actions taken to get confidential information from research scientists working with community members. *See id.* ¶¶ 10–12. Industry tactics also have a deterrent effect on inquiry into the effects of industrial hog operations, preventing collaborations between researchers working in the field of community-based participatory research and community residents. *Id.* ¶ 12. In the late 1990s, for example, after Drs. Steve Wing and Susanne Wolf finalized a report on the frequency of health symptoms in populations living in proximity to industrial hog operations, the North Carolina Pork Council sent Drs. Wing and Wolf a letter requesting all documentation related to the study including, among other things, “the identities of all persons who worked on or contributed to the Study (including persons interviewed).” Letter from Att’ys for N.C. Pork Council, to Steve Wing & Susanne Wolf (1999), *quoted in* Steve Wing, *supra*. The request raised a number of concerns, not the least of which was that the identities of the people participating in the study were confidential. Wing, *supra*, at 441. Industry representatives also contacted federal funders of Dr. Wing’s researchers. *Id.* As Dr. Wing later wrote:

Breach of confidentiality was a concern not only from a legal and ethical standpoint. The community trust upon which our research depended would be seriously compromised as well, potentially destroying valued professional and personal relationships and threatening the continuation of research into exposures and health of neighbors of swine CAFOs.

*Id.* Dr. Wing concluded that although there is a legitimate role in scientific inquiry for evaluating evidence and replicating findings, “the primary purpose of the Pork Council’s request appeared to be harassment and intimidation.” *Id.*; see also David Kirby, *Animal Factory* at 262, 338–340 (1st ed. 2010) (describing industry effort to discredit JoAnn Burkholder, currently the William Neal Reynolds Distinguished Professor at North Carolina State University and director of the NCSU Center for Applied Aquatic Ecology). As OCR already is aware, Dr. Wing was recently again served with a subpoena from industry representatives seeking information about the identity of participants in Dr. Wing’s community-based participatory research on the effects of living in proximity to industrial swine operations. See Decl. of (b) (6) Privacy, (b) (7) at ¶ 11.<sup>11</sup>

(C) P I P I

### CONCLUSION

We ask that EPA immediately ensure that DEQ put into place measures to ensure that intimidation does not occur in its permitting program “directly or through contractual, licensing, or other arrangements...”, 40 C.F.R. § 7.35(a), and that EPA fully investigate DEQ’s failure on January 13, 2016 to protect Complainants from intimidation.

Please do not hesitate to contact us for additional information related to this letter.

Sincerely,



---

Marianne Engelman Lado  
Senior Staff Attorney  
Alexis Andiman  
Associate Attorney  
Earthjustice  
48 Wall Street, 19th Floor

---

<sup>11</sup> Tactics used to put pressure and intimidate Complainants are also exemplified by a communications campaign developed and implemented by North Carolina Farm Families, an organization recently established for the purpose of organizing against what it calls “anti-agriculture activist groups” and is supported by Smithfield, the North Carolina Farm Bureau and other industry players. N.C. Farm Families, *Who Are North Carolina’s Farm Families*, <http://ncfarmfamilies.com/about-us/> (last visited July 8, 2016). In a flyer sent to growers in May 2016, North Carolina Farm Families sought contributions for a campaign to counteract “powerful groups led by (b) (6) Privacy, (b) (7) Waterkeeper Alliance,” which is one of the Complainants. See Fundraising Advertisement, Ed Emory, President, N.C. Farm Families (May 18, 2016) (appended to Letter from Zach McCullen III, Vice President – Swine Div., Prestage Farms, Inc. (May 18, 2016)), attached hereto as Ex. 12. The advertisement boasted of spending two million dollars “to run ads across North Carolina – on television, radio, newspapers and the Internet”. *Id.*

New York, NY 10005  
[mengelmanlado@earthjustice.org](mailto:mengelmanlado@earthjustice.org)  
[aandiman@earthjustice.org](mailto:aandiman@earthjustice.org)  
T: 212.845.7393  
F: 212.918.1556

Elizabeth McLaughlin Haddix  
Senior Staff Attorney  
UNC Center For Civil Rights  
School of Law Annex  
323 W. Barbee Chapel Rd.  
Chapel Hill, NC 27517  
[emhaddix@unc.edu](mailto:emhaddix@unc.edu)  
919-445-0176

cc.  
Daria Neal  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Office of the Assistant Attorney General, Main  
Washington, D.C. 20530

Sam Hayes  
North Carolina Department of Environmental Quality  
217 West Jones Street  
Raleigh, NC 27603

(b) (6) Privacy, (b) (7)  
(C) P I P I  
North Carolina Environmental Justice Network

(b) (6)  
Privacy, (b)  
REACH

(b) (6) Privacy,  
(b) (7)(C)  
Personal  
Waterkeeper Alliance, Inc.

#### Exhibits

1. Letter from Thomas Brugato on Behalf of the National Pork Producers Council et al. to Velveta Golightly-Howell (Dec. 18, 2015)



2. Letter from Thomas Brugato on Behalf of the National Pork Producers Council et al. to Velveta Golightly-Howell (Feb. 19, 2016)
3. Declaration of (b) (6) Privacy, (b) (7) (June 30, 2016)
4. Letter from Marianne Engelman Lado, Sr. Staff Att'y, Earthjustice & Elizabeth Haddix, Sr. Staff Att'y, Univ. of N.C. Ctr. for Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 5, 2016)
5. Letter from Marianne Engelman Lado, Earthjustice & Elizabeth Haddix, Univ. of N.C. Ctr. on Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 11, 2016)
6. Photograph of Pork Council representatives (Jan. 13, 2016)
7. Declaration of (b) (6) (Aug. 30, 2014), originally submitted with Complaint
8. Declaration of (b) (6) Privacy, (Sept. 2, 2014), originally submitted with Complaint
9. Declaration of (b) (6) Privacy, (Apr. 18, 2014), originally submitted with Complaint
10. Steve Wing, *Social Responsibility and Research Ethics in Community-Driven Studies of Industrialized Hog Production*, 110 Env'tl. Health Persp. 437 (2002)
11. E-mail from Gary Pearce, to Keira Lombardo, Senior Vice President of Corporate Affairs, Smithfield Foods, Inc., et al. (Aug. 24, 2015, 2:58 PM)
12. Fundraising Advertisement, Ed Emory, President, N.C. Farm Families (May 18, 2016)(appended to Letter from Zach McCullen III, Vice President – Swine Div., Prestage Farms, Inc.. (May 18, 2016)

# **Exhibit 1**

December 18, 2015

**By Email & U.S. Mail**

Velveta Golightly-Howell  
Director, Office of Civil Rights  
EPA  
Mail Code 1210A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
(202) 564-7272  
golightly-howell.velveta@epa.gov

**Re: National Pork Producers Council and North Carolina Pork Council Motion  
to Intervene in Administrative Complaint 11R-14-R4 Proceedings**

Dear Director Golightly-Howell:

We represent the National Pork Producers Council (NPPC) and the North Carolina Pork Council (NCPC), and write in regards to Title VI Administrative Complaint 11R-14-R4 (the Complaint) relating to the North Carolina Department of Environmental Quality (NCDEQ, formerly known as the North Carolina Department of Environment and Natural Resources) general permit program for swine farms in North Carolina. The Complaint was accepted in part for investigation by EPA's Office of Civil Rights on February 20, 2015.

Please accept this letter as NPPC and NCPC's motion to intervene and participate in the proceedings relating to the Complaint. Specifically, NPPC and NCPC seek and intend to participate in the upcoming mediation and any further proceedings that OCR may conduct in connection with the Complaint against NCDEQ.

NPPC and NCPC are stakeholders in this proceeding because these organizations and their members could be adversely affected by the proceeding's outcome.<sup>1</sup> In addition, NPPC and NCPC will present valuable information to OCR and the mediator that would assist in resolving the Complaint. For these reasons, NPPC's and NCPC's intervention is justified.

---

<sup>1</sup> Indeed, because the resolution of this Complaint could potentially have a direct impact on pork producers in North Carolina (and elsewhere in the country), excluding NPPC and NCPC from these proceedings would raise a serious due process concern, as the pork industry would be deprived of notice and an opportunity to be heard on these matters. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (touchstone requirement of the Due Process Clause is "notice and opportunity for [a] hearing").

NPPC is an association of 43 state pork producer organizations, which serves as the global voice for the nation's pork industry. The U.S. pork industry represents a significant value-added activity in the agricultural economy and the overall U.S. economy. Nationwide, more than 68,000 pork producers marketed more than 112 million hogs in 2014, and those animals provided total gross receipts of more than \$21 billion. According to Iowa State University economists Daniel Otto, Lee Schulz and Mark Imerman, nationwide the U.S. pork industry is directly responsible for the creation of nearly 35,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture, and additional jobs in related sectors. All told, the U.S. pork industry is responsible for more than 550,000 mostly rural jobs in the United States. In North Carolina, the pork industry is responsible for approximately \$1.46 billion in gross state product and 24,626 jobs.

Over 2,400 pork producers in North Carolina belong to the NCPC with a large number of them operating under the permits that are challenged in the Complaint. Chartered in 1962, the NCPC is one of the oldest state pork producer organizations in the country whose mission has been and continues to be promoting and educating to ensure a socially responsible and profitable North Carolina pork industry.

With this membership, history and mission, NPPC and NCPC have detailed knowledge of the pork industry (both from a national and state perspective), and can provide OCR useful information and an important perspective that would assist in resolving the Complaint, including:

- Information regarding the North Carolina permitting program and controls regulating the pork industry, including the history of that program and the extensive participation of the public in developing those controls;
- Information as to how the North Carolina permitting program and controls compares to others in the country;
- Information on current operational practices on hog farms subject to this regulation;
- Information on regulatory compliance by permitted farms and their meeting of environmental performance benchmarks, including analysis of how swine farms in North Carolina compare to those elsewhere in the United States;
- The substantial economic benefits of the pork industry in North Carolina, including its benefits to communities of color and low income communities, and the similar national economic benefits of the pork industry;
- The history of the pork industry in North Carolina, including the many improvements to industry practices made over the past two decades;
- Information on siting of these farms and the changing demographics of communities near swine farms in the state;



- Information relating to the nature of the alleged injuries claimed in the Complaint and the experiences of farmers on the ground;
- Analysis relating to the claimed statistical disparities asserted in the Complaint; and
- Information and analysis relating to the demographics of communities located near swine farms nationally.

EPA has repeatedly recognized that permittees and industry representatives have valuable information that may assist with the investigation and potential informal resolution of Title VI complaints. *Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits* at 1 (1998) (“EPA believes that robust stakeholder input is an invaluable tool for . . . informally resolving Title VI complaints when they arise.”); *see also* EPA, *Role of Complainants and Recipients in the Title VI Complaints and Resolution Process* at 5 (May 4, 2015) (noting that OCR may “gather additional information from relevant sources (e.g., community members, businesses/industry, and permit holders)”; 65 Fed. Reg. 39,650, 39,693 (June 27, 2000) (“The permittee may also be asked to provide information to assist in the investigation of the complaint. . . . During several investigations, permit applicants have sent information to OCR that they believe is relevant. In those instances, OCR has reviewed the information and placed it in the investigatory file.”); EPA, No. 01R-95-R9, *Investigative Report*, at 40 (Aug. 30, 2012) (noting that the administrative file contained “material provided” “by the facilities” at issue).

EPA has also recognized that permittee and industry interests can be adversely affected by the disposition of a Title VI complaint, and so recognizes that they are a stakeholder in the Title VI process. *See, e.g.,* EPA, *Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits* at 1 (1998) (“Title VI environmental permitting cases may have implications for a diversity of interests, including those of the recipient, the affected community, and the permit applicant or permittee.”).

For these reasons, NPPC and NCPC desire to participate in the mediation and any other proceedings relating to the Complaint. NPPC and NCPC have vital information essential to a full and fair resolution of this matter. NPPC, NCPC and their respective members also have a direct stake in the outcome of these proceedings, and serious due process concerns would be raised if NPPC and NCPC were excluded from these proceedings. NCPC’s and NCPC’s participation in these proceedings is fully consistent with EPA’s Title VI regulations and guidance, which “encourage the informal resolution of all complaints with the participation of *all* affected stakeholders.” EPA, *Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits* at 3 (1998) (emphasis added); *see also* 65 Fed. Reg. at 39,673 (noting that “OCR may seek participation from the complainant, the permittee, or others” in the informal resolution process).

We understand that the mediation is currently planned to take place in January 2016. Accordingly, we would appreciate OCR’s confirmation of NPPC’s and NCPC’s intervention as soon as practicable, so that NPPC and NCPC can adequately prepare for and make arrangements to attend the mediation, and we intend to reach out directly to the mediator regarding NPPC’s and NCPC’s participation. Please do not hesitate to contact us if you have any questions.

Sincerely,

*Thomas Brugato*

National Pork Producers Council

By Counsel

Gerald Yamada  
Thomas R. Brugato  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
Tele: (202) 662-5515  
Email: tbrugato@cov.com

*Benne C. Hutson*

North Carolina Pork Council

By Counsel

Benne C. Hutson  
McGuireWoods LLP  
201 North Tryon Street  
Suite 3000  
Charlotte, North Carolina 28202-2146  
Tele: (704) 343-2060  
Email: bhutson@mcguirewoods.com

Eugene E. ("Matt") Mathews, III  
Christopher E. Tribble  
McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219-3196  
Tele: (804) 775-1000  
Email: mmathews@mcguirewoods.com  
ctribble@mcguirewoods.com

cc: Michael K. Lewis, Mediator  
Jeryl Covington, EPA  
Sam Hayes, General Counsel, NCDEQ  
Marianne Engleman Lado, Esq., counsel for Complainants  
Jocelyn D'Abrosio, Esq., counsel for Complainants  
Michael Formica, Assistant Vice-President, Domestic Policy & Counsel, NPPC  
Deborah Johnson, Chief Executive Officer, NCPC

## **Exhibit 2**

February 19, 2016

**By Email & U.S. Mail**

Velveta Golightly-Howell  
Director, Office of Civil Rights  
EPA  
Mail Code 1210A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
(202) 564-7272  
golightly-howell.velveta@epa.gov

**Re: National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings**

Dear Director Golightly-Howell:

We are in receipt of your letter dated January 15, 2016 and appreciate your response regarding our request to participate in these proceedings. In the event mediation between the Complainants and NCDEQ does not result in a resolution, the North Carolina Pork Council and the National Pork Producers Council (“the Councils”) stand ready to serve as a resource for OCR as it conducts its investigation. We would plan to submit information that would assist in resolving the allegations in the complaint. Please do not hesitate to contact us if you have any questions or feel that the Councils could provide useful information at any point.<sup>1</sup>

In addition, so you are fully aware, we wanted to provide you a brief update relating to the mediation. As you know, a mediation session took place on January 13 and 14, in Chapel Hill, North Carolina. As stated in the Councils’ December 18 motion, both Councils intended and desired to participate in this mediation session, and neither OCR nor the mediator had stated before the mediation that the Councils could not attend. Unfortunately, counsel for the Complainants excluded both Councils from the mediation session, despite the NCDEQ’s support for the Councils’ participation.

The Councils traveled to the location for the mediation session and arrived well before the scheduled start time. Client representatives for each Council as well as outside counsel were present and traveled substantial distances to attend, demonstrating the Councils’ good faith commitment to participating in the mediation.

After several hours of discussion (through the mediator) regarding the Councils’ participation, counsel for Complainants stated that the Councils were not welcome at the mediation, despite NCDEQ’s statements to the mediator in support of the Councils’

---

<sup>1</sup> The Councils continue to believe that they have a right to participate in the mediation and investigation and reserve all rights in this respect.



participation. The only rationale provided was a vague reference to the “integrity of the mediation process.” The Complainants did indicate that they might be willing to meet separately, outside of the mediation context, with the Councils. They then instructed the Councils to leave the building where mediation was held – the University of North Carolina Law School Center for Civil Rights (who are co-counsel for Complainants).

It is unfortunate that the Councils were excluded from the mediation by Complainants, and the Councils remain puzzled as to why Complainants remain opposed to the Councils’ good-faith participation. The Councils are disappointed that, despite being stakeholders with regards to the issues raised by the complaint and having significant expertise and relevant facts that could assist in the resolution of these issues, they have been excluded from good-faith participation in the mediation.

Nevertheless, the Councils remain ready to participate in the mediation in good faith should Complainants change their position on the matter. In addition, as noted above, the Councils would be pleased to serve as a resource for OCR and plan to provide relevant material to OCR at an appropriate time. Please do not hesitate to contact us if we can be of assistance.

Sincerely,

*Thomas Brugato*

National Pork Producers Council

By Counsel

Gerald Yamada  
Thomas R. Brugato  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
Tele: (202) 662-5515  
Email: tbrugato@cov.com

*Thomas Brugato*  
*for Benne C. Hutson*  
North Carolina Pork Council

By Counsel

Benne C. Hutson  
McGuireWoods LLP  
201 North Tryon Street  
Suite 3000  
Charlotte, North Carolina 28202-2146  
Tele: (704) 343-2060  
Email: bhutson@mcguirewoods.com

Eugene E. (“Matt”) Mathews, III  
Christopher E. Tribble  
McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219-3196  
Tele: (804) 775-1000  
Email: mmathews@mcguirewoods.com  
ctrubble@mcguirewoods.com

cc: Michael K. Lewis, Mediator  
Jeryl Covington, EPA  
Sam M. Hayes, General Counsel, NCDEQ  
Marianne Engleman Lado, counsel for Complainants  
Elizabeth Haddix, counsel for Complainants  
Michael Formica, Assistant Vice-President, Domestic Policy & Counsel, NPPC  
Deborah Johnson, Chief Executive Officer, NCPC

## **Exhibit 3**

## DECLARATION OF (b) (6) Privacy, (b) (7)(C) Personal

1. My name is (b) (6) Privacy, (b) (7)(C) Personal. I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

2. The information I provided in my previous declaration, dated August 29, 2014, is incorporated herein.

3. I have been the (b) (6) Privacy, (b) (7)(C) Personal Privacy for the North Carolina Environmental Justice Network (the "EJ Network") since October 2013 and currently serve as (b) (6) Privacy, (b) (7)(C) Personal. I have been with the EJ Network since 1999, when I joined as a community organizer.

### Atmosphere of Intimidation in North Carolina

4. As (b) (6) Privacy, (b) (7)(C) Personal for the EJ Network, I have been made aware of the intimidating atmosphere in which members of the community live and work, which makes it more difficult to speak up about the problems they face.

5. In parts of Eastern North Carolina such as Duplin County, there aren't many jobs and people have family members who work for industrial hog operations. They are worried that if they speak out, their family members may lose their jobs.

6. Eastern North Carolina also has a history of racial intimidation and oppression, from slavery to Jim Crow segregation, to today. The counties where

hog operations are now located historically were places with plantations and the use of slave labor. This history has an effect on relations and power in the community today and it remains hard for African Americans to speak out, particularly in low-income communities.

7. Officials from the North Carolina Department of Environmental Quality (“DEQ”), formerly the Department of Environment and Natural Resources (“DENR”) have attended meetings pulled together by REACH and by the EJ Network and have heard complaints both about the impacts of industrial hog operations and, also, this atmosphere of intimidation.

8. To my knowledge, DEQ has failed to take any action to crack down on acts of intimidation. In fact, DEQ employees in regional offices, where community members are supposed to call or send complaints about whether the operations are complying with DEQ’s standards, have called the operations and let them know that community members have lodged the complaints. It is my understanding that this happened to (b) (6) Privacy (b) : he called DEQ (then DENR) to make a complaint and the next thing he knew, the operator of the hog facility called him up about his complaint.

9. Similarly, it is public knowledge that some hog facility owners have threatened members of the community for speaking out. (b) (6) Privacy, (b) (7)(C), for example, has talked about her experience being threatened by a grower with



violence or litigation if she kept complaining about the hog operation that was spraying waste on her property and affecting her life and the quality of life of her family. To my knowledge, DEQ never opened an investigation or even threatened to withdraw the permit of (b) (6) Privacy neighbor to protect (b) (6) Privacy rights. To my knowledge, DEQ took no action to ensure that its programs and activities were conducted in a non-discriminatory and non-intimidating way.

10. Individual growers and the pork industry, through its trade organizations the Pork Councils, have tried to intimidate community members directly and through actions taken to get confidential information from research scientists working with community members. I've worked with (b) (6) Privacy, (b) (7)(C) Personal, for example, on a study that included work in the community.

11. In the late 1990s, (b) (6) Privacy (b) conducted a study in which interviewers assured participants that their responses to a questionnaire would be kept confidential. I participated in that study as a recruiter and trainer, and in that capacity, I informed members of the community that their participation would be confidential. But in 1999, attorneys for the North Carolina Pork Council requested documentation of this work including the identities of community members who were interviewed. It's my understanding that this recently happened again when (b) (6) Privacy (b) received a subpoena to release data underlying his work that includes

confidential information about the personal identities of community members who participated in his research.

12. In my opinion, the Pork Council is trying to intimidate members of the community, prevent collaborations between community members and researchers, and to discourage researchers from engaging in community-based research to investigate the effects of the industry. I'm concerned that the way [REDACTED] was treated sends a message to other researchers about what might happen to them if they enter community-based participatory research.

**Intimidation by the Pork Councils and DEQ in the Context of  
Mediation, 2016**

13. In the summer of 2015, the EJ Network and other complainants that filed the civil rights complaint with EPA in September, 2013, agreed voluntarily to participate in Alternative Dispute Resolution (ADR) with DEQ, in an attempt to resolve the issues raised in the complaint.

14. It is my understanding that the content of the mediation remains confidential.

15. As a result of conversations in which I participated with the convener of the ADR process, Will Hall, and with the mediator who was selected by complainants and DEQ, it was my understanding that mediation was confidential – both the content and the very fact of mediation was confidential.

16. I was uncomfortable with the idea that we would keep the fact that we were in mediation confidential because I have a responsibility for reporting to the communities that I work with, including the groups that are part of the EJ Network, our Board, Planning Committee, and membership body. It was my understanding that we couldn't tell anyone that we were in mediation unless that person was also bound by the same confidentiality agreement.

17. We brought up these concerns to the mediator, who listened and asked us to keep mediation confidential at least until we had our first negotiation with DEQ and then we could talk about it.

18. We were asked to sign an agreement to keep information about the mediation confidential. We asked to change the language because the mediator was going to come to eastern North Carolina and we had agreed to introduce him to members of the community. We told the mediator that we would keep the mediation confidential but didn't want to break the agreement when we reached out to people in the community to meet with the mediator. The mediator agreed to change the language to avoid this problem but it was our understanding that the mediation was still supposed to be confidential.

19. In December, we found out that the North Carolina Pork Council and the national Pork Council had filed papers with EPA to intervene in our complaint and in our mediation. I didn't tell the Pork Councils about the mediation and to my



knowledge, neither did any of the complainants. It is likely that DEQ staff or people told by DEQ staff about the mediation gave that information to the Pork Councils.

20. The complainants filed papers with EPA objecting to the Pork Councils' involvement in both the complaint and the mediation.

21. I did not want representatives of the Pork Councils in mediation. We filed the complaint against DEQ and the mediation was between the complainants and DEQ.

22. Our first face-to-face mediation session was on January 13<sup>th</sup>, 2016. To my knowledge, the complainants did not invite or otherwise agree to allow representatives of the Pork Councils to the mediation. To my knowledge, the complainants did not give representatives of the Pork Councils information about when or where the mediation sessions would be held.

23. When I arrived at the offices of the University of North Carolina School of Law Center for Civil Rights for the first mediation session on January 13<sup>th</sup>, I saw two representatives of the Pork Councils in the parking lot.

24. This didn't make me feel good, to know that they were there. They might have been taking pictures of who was representing the complainants or writing down my license tag number. They could have been writing down all of

our tag numbers. I felt exposed and that other community representatives were exposed.

25. When we got in the conference room where we were supposed to have the mediation, we found out that there were five representatives from the Pork Councils who were insisting that they should be allowed into the mediation.

26. Even then, the representatives of DEQ were either quiet or arguing that these representatives of the Pork Councils should be included in the mediation session. The DEQ representatives were congregating in the hallway with the representatives of the Pork Councils, which sent the message that the DEQ representatives were beholden to the industry and that they didn't even care about maintaining the appearance that they were unbiased and independent.

27. I have no reason to believe that anyone except representatives of DEQ told the representatives of the Pork Councils where the meeting would be held and at what time.

28. I believe that the presence of representatives of the Pork Councils was intended to intimidate the complainants. To my knowledge, neither the representatives of the Pork Councils nor DEQ gave complainants notice that the Pork Councils were planning to attend.

29. Complainants had also filed papers with EPA making it clear that complainants objected to any formal status or participation in the investigation or

mediation for the Pork Councils, so neither the Pork Councils nor DEQ had any basis for believing that the complainants would allow the Pork Councils to participate voluntarily.

### Conclusion

30. EPA needs to investigate and do something about the atmosphere of intimidation, which I believe has the effect of preventing researchers from working with communities to analyze the impacts of swine operations and preventing community members from asserting their rights and making complaints. The recent action by the Pork Councils, storming into our mediation uninvited, demonstrates the close relationship they have with DEQ, DEQ's willingness to expose community members. DEQ's behavior went beyond not taking action to stop tactics of intimidation: in this case, DEQ actively pressure complainants to seat representatives of the Pork Councils at the table even though they had come to the meeting uninvited and opposed.

31. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed June 30<sup>th</sup>, 2016

(b) (6) Privacy, (b) (7)(C) Personal Privacy



## **Exhibit 4**



# EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

January 5, 2016

**By Email & Mail**

Velveta Golightly-Howell  
Director, EPA Office of Civil Rights  
Mail Code 1210A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Email: [golightly-howell.velveta@epa.gov](mailto:golightly-howell.velveta@epa.gov)

**Re: *EPA Complaint No. 11R-14-R4: Opposition to National Pork Producers Council Request to Intervene***

Dear Ms. Golightly-Howell:

We write on behalf of Complainants North Carolina Environmental Justice Network ("NCEJN"), Rural Empowerment Association for Community Help ("REACH"), and Waterkeeper Alliance, Inc., in response to the December 18, 2015 "National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings."

We strongly object to the improper and unprecedented attempt by the National Pork Producers Council and North Carolina Pork Council (collectively, "Pork Councils") to intrude in this administrative process and urge you to reject their request in a timely way. The Pork Councils' self-styled "motion to intervene" is not proper under any legal authority.

EPA's regulations implementing Title VI of the Civil Rights Act of 1964, 40 C.F.R. pt. 7, establish a process whereby complainants may initiate an investigation and EPA's Office of Civil Rights ("OCR") may also conduct compliance reviews. 40 C.F.R. §§ 7.120, 7.115. The regulations contain provisions for notification of complainants and recipients – but afford no formal role for third-parties. *See id.* This process and the roles of complainants and recipients contemplated by the regulations are consistent with guidance provided by the Title VI Legal Manual issued by the Department of Justice:

The Coordination Regulations require that Federal agencies establish procedures for the "prompt processing and disposition" of complaints of discrimination in federally funded programs. 28 C.F.R. § 42.408(a).... Generally, by regulation, an agency will allow complainants 180 days to file a complaint, although the agency may exercise its discretion and accept a complaint filed later in time. *See, e.g.,* 28 C.F.R. § 42.107(b).... An investigation customarily will include interviews of the complainant, the recipient's staff, and other witnesses; a review of the recipient's pertinent records, and potentially its facility(ies); and consideration of the evidence gathered and defenses asserted. If the agency finds no violation after an investigation, it must notify, in writing, the recipient and the complainant, of this

NORTHEAST 48 WALL STREET, 19<sup>TH</sup> FLOOR NEW YORK, NY 10005

T: 212.845.7376 F: 212.918.1556 NEOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

decision. See, e.g., 28 C.F.R. § 42.107(d)(2). If the agency believes there is adequate evidence to support a finding of noncompliance, the first course of action for the agency is to seek voluntary compliance by the recipient. See, e.g., 28 C.F.R. § 42.107(d)(1). If the agency concludes that the matter cannot be resolved through voluntary negotiations, the agency must make a formal finding of noncompliance and seek enforcement, either through judicial action or administrative fund suspension.

U.S. Dep't of Justice, Title VI Legal Manual ("Title VI Legal Manual") § X(C), *available at* <http://www.justice.gov/crt/title-vi-legal-manual-0#C> (last updated Aug. 6, 2015). While the Title VI Legal Manual contemplates the possibility that an agency may interview "other witnesses," there is no formal status accorded parties other than complainants and recipients.

Indeed, though many aspects of EPA's case management process have been in flux, EPA guidance documents do not afford a role for third-party interveners. See EPA, Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaints and Resolution Process (2015), *available at* <https://assets.documentcloud.org/documents/2178959/final-roles-of-complainants-and-recipients-issue.pdf>; EPA, Interim Case Resolution Manual at 14 (2015) ("Interim Case Resolution Manual"), *available at* <https://www.documentcloud.org/documents/2630278-epa-case-resolution-manual.html> (describing roles of Complainants and Recipients).

The Pork Councils have other more appropriate means at their disposal to inform an investigation and influence North Carolina Department of Environmental Quality ("DEQ") policy, and their suggestion that "due process" is implicated carries no weight. First, as the DOJ Legal Manual describes, the investigation into a claim under Title VI "will include interviews of the complainant, the recipient's staff, *and other witnesses*; a review of the recipient's pertinent records, and potentially its facility(ies)." Title VI Legal Manual (emphasis added). Should EPA find that the Pork Councils or their members have relevant information to provide, it is within EPA's authority to interview or otherwise collect information from them. Moreover, the Pork Councils can continue to lobby DEQ throughout this process and in the event that DEQ issues any proposal to modify its policies and practices. Under state law, DEQ would also be required to comply with notice requirements should it seek to modify or revoke a general permit. N.C.G.S. § 143-215.1(b)(4)(c). Of course, the Pork Councils are also welcome to send relevant information to complainants so that we can take their positions into account.<sup>1</sup>

It would be ironic, indeed, if EPA were to succumb to industry pressure to carve out a new role for so-called interveners, particularly given the limited role EPA has historically

---

<sup>1</sup> The Pork Councils' reliance on *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), to prop up its request for intervention based on due process concerns reflects the weakness of their argument. This 1950 decision focused on the sufficiency of notice in the context of a judicial settlement of accounts where the final judicial decree would close off rights that trust beneficiaries would otherwise have. *Id.* at 655-66. The ways in which this case is inapposite are too numerous to detail: *Mullane*, for example, involved a judicial settlement, not ADR. Moreover, the outcome of the judicial settlement in *Mullane* was dispositive of interests, whereas the nature and terms of any agreement arising from ADR are speculative at this point, and should due process rights be implicated, DEQ will have the opportunity to comply with any applicable notice and comment requirements.



recognized for complainants in Title VI administrative actions. Perhaps most controversially, EPA referred to complainants as “tipsters” in a draft white paper entitled “Role of Complainants and Recipients in the Title VI Complaints and Resolution Process,” released on January 25, 2013:

A Title VI complainant is not like a plaintiff in court. Rather, a complainant’s role is more like that of a tipster, who reports what he or she believes is an act violating Title VI by an entity receiving federal financial assistance (the recipient) to the associated agency providing such assistance, in this case EPA. EPA is not in an adjudicatory role, evaluating evidence produced by opposing sides, but instead investigates allegations about its recipient, and reaches a conclusion regarding whether a violation of Title VI has occurred.

EPA, Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaints and Resolution Process at 1 (draft, 2013), *available at* <http://cchealth.org/hazmat/hmc/pdf/2013-0208-Title-VI-of-the-Civil-Rights-act-of-1964.pdf>. Of course, complainants are not just “tipsters” but people who have been subject to exclusion or discrimination and are asserting their rights or groups representing those individuals. Indeed, comments submitted to EPA by community-based, regional and national groups in response to the January 25, 2013 white paper called for more meaningful engagement of complainants in the investigation and resolution processes: “EPA must meaningfully involve those suffering discrimination in the investigation of their complaints, including proactively involving them in the investigation, providing full and free access to documents, and providing the resources to even the playing field during Alternative Dispute Resolution...” Comments on U.S. Environmental Protection Agency Draft Policy Papers filed by California Rural Legal Assistance Foundation et al. at 22 (March 20, 2013), *available at* [http://www.prrac.org/pdf/Title\\_VI\\_Comments\\_2013-03-20.pdf](http://www.prrac.org/pdf/Title_VI_Comments_2013-03-20.pdf). Although EPA’s recently released Interim Case Resolution Manual no longer refers to complainants as “tipsters,” the role of complainants proposed by recently released Interim Case Resolution Manual remains circumscribed:

An OCR complainant is not like a plaintiff in court. Rather, a complainant’s role is to report what s/he believes is an act violating nondiscrimination statutes by an entity receiving federal financial assistance to the associated agency. The EPA is not in an adjudicatory role, evaluating evidence produced by opposing sides, but instead investigates allegations about its recipient, and reaches a conclusion regarding whether that recipient is in compliance with its civil rights obligations to the EPA.

Interim Case Resolution Manual at 14. In this context, where the agency does not even recognize complainants and recipients as having equivalent status as parties in a judicial action, it is nonsensical to accord the Pork Council party status, with the rights and obligations of a “party.”

Finally, neither Title VI nor EPA’s implementing regulations provide authority for the Pork Council to have a role in the ADR process unless complainants and the recipient consent. Complainants filed their Title VI complaint against the North Carolina Department of

Environment and Natural Resources (now DEQ) on September 3, 2014. That Complaint, 11R-14-R4, was accepted for investigation by OCR on February 20, 2015. In March 2015, Complainants and DEQ began the Alternative Dispute Resolution (“ADR”) process with the assistance of EPA’s Conflict Prevention and Resolution Center. Our good faith participation in this process represents the culmination of years of effort by NCEJN, REACH and Waterkeeper to remedy the racially discriminatory of DEQ’s permitting policies and, particularly, DEQ’s decision to permit more than 2,000 swine facilities in eastern North Carolina without adequate protections for the health and welfare of already overburdened communities. Complainants agreed to participate in ADR under the terms established by EPA. Notwithstanding the Pork Councils’ reliance on the 1998 Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits suggesting that OCR “may” seek participation from “others” in a resolution process, see National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings at 3 (filed Dec. 18, 2015), the following description of the ADR process offered by EPA’s Interim Case Resolution Manual is consistent with the information provided by EPA through the process:

EPA OCR’s Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations *between the complainant and recipient*, through the use of a professionally trained mediator.... As appropriate, the EPA may offer *the complainant and the recipient* an opportunity to engage in the ADR process at any stage in the complaint process....

Interim Case Resolution Manual at 20 (emphasis added). The process is voluntary, and absent mutual agreement by the parties – which has certainly not occurred here – the Pork Councils have no seat at the table.

Complainants further urge EPA to reject the Pork Councils’ request quickly and to ensure that it does not result in any delay of the January 13-14 mediation. Throughout last spring and summer, we worked with DEQ and William Hall to select a mediator. During the first week of September 2015, DEQ and the Complainants agreed to work with (b) (6) Privacy, as mediator, and since that time have engaged in several preliminary conferences with (b) (6) Privacy to reach agreement on the mediation terms and conditions. We rescheduled the mediation from early December 2015 to accommodate conflicts in DEQ counsel’s schedule, and have been preparing to proceed with mediation on January 13-14, 2016. Our clients have already waited too long for vindication of their rights to be free from race discrimination as promised under Title VI. Given the timetable, we would appreciate your response to this letter this week so we can finalize travel plans and other arrangements for negotiations. To be clear, complainants do not consent to the participation of the Pork Councils in the mediation.

One other issue bears mention. Pursuant to our conversations with Mr. Hall and initial discussions with (b) (6) Privacy, the fact that Complainants and Respondent were participating in the ADR process was to remain confidential. Complainants have raised concerns about the scope of confidentiality and on multiple occasions suggested that confidentiality extend only to the content of mediation and not the fact that the parties are engaging in ADR. It was our understanding that this was an issue that would be on the table when we began mediation. It was not until Friday, December 18<sup>th</sup> – the same day that we received the letter from the Pork



Councils – that we heard from (b) (6) Privacy, (b) (7)(C) that we were no longer bound to keep the fact of mediation confidential.

The Pork Council's intrusion into our long-awaited ADR negotiations represent a breach of the confidentiality agreement between counsel, our clients and DEQ or, in the alternative, miscommunication by EPA to those involved in this process. We are troubled by this breach: complainants complied with EPA and (b) (6) Privacy, (b) (7)(C) requests that we maintain secrecy despite our interests in providing information to community-based stakeholders. The Pork Councils' knowledge of the ADR process raises serious questions about the ground rules for this process and whether both sides will play by the rules.

In sum, we strongly oppose the Pork Councils' ungrounded request to "intervene" in the administrative complaint and ADR process. Please feel free to reach me or our co-counsel at the UNC Center for Civil Rights, Elizabeth Haddix, to discuss this matter. We look forward to hearing back from you in the coming days.

Sincerely,



Marianne Engelman Lado  
Senior Staff Attorney  
Earthjustice  
212 845-7393  
mengelmanlado@earthjustice.org

Elizabeth Haddix  
Senior Staff Attorney  
UNC Center for Civil Rights  
919 445-0176  
emhaddix@unc.edu

CC: (b) (6) Privacy, (b) (7), NCEJN  
(b) (6), REACH  
(b) (6) Privacy, (b) (7)(C), Waterkeeper Alliance, Inc.  
Sam Hayes, General Counsel, NC DEQ  
(b) (6) Privacy, . Mediator  
(b) (7)(C) Covington, EPA  
Gerald Yamada, Thomas R. Brugato, Covington & Burling LLP  
Benne C. Hutson, Eugene E. Matthews, III, Christopher E. Tribble,  
McGuire Woods LLP  
Michael Formica, NPPC

## **Exhibit 5**



January 11, 2016

**By Email & First-Class Mail**

Velveta Golightly-Howell  
Director, EPA Office of Civil Rights  
Mail Code 1210A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Email: [golightly-howell.velveta@epa.gov](mailto:golightly-howell.velveta@epa.gov)

**Re: EPA Complaint No. 11R-14-R4**

Dear Ms. Golightly-Howell:

We write on behalf of Complainants North Carolina Environmental Justice Network (NCEJN), Rural Empowerment Association for Community Help (REACH), and Waterkeeper Alliance, Inc., in response to a letter submitted by the National Pork Producers Council and North Carolina Pork Council (the "Pork Councils") on January 7, 2016 in support of their effort to "intervene" in proceedings related to Administrative Complaint 11R-14-R4.

The Pork Councils' attempt to coopt "basic precepts of environmental justice" to justify their effort to inject themselves into the process for investigating and resolving the civil rights complaint is riddled with irony. See Pork Councils Letter at 1. The Principles of Environmental Justice were developed by a growing grassroots movement "to fight the destruction and taking of our lands and communities" and secure freedom for those who have been oppressed and colonized. See First National People of Color Environmental Leadership Summit, *The Principles of Environmental Justice* (1991), available at <http://www.ejnet.org/ej/principles.pdf>; see generally *Unequal Protection: Environmental Justice and Communities of Color* (Robert D. Bullard, ed.) (1993). It is beyond a stretch to argue that these precepts require that EPA grant industry novel "intervenor" status or that industry must be allowed to participate in mediation of a race discrimination complaint against the state agency charged with protecting the environment and public health.

Moreover, the Pork Councils' misplaced reliance on various authorities pertaining to hearings ignores the current status of this investigation and ADR process. We are not currently before an Administrative Law Judge or in a judicial proceeding where an evidentiary record is circumscribed and limited by rules of evidence. Regulations promulgated by various federal agencies regarding the conduct of hearings are simply inapposite. The Pork Councils are currently free to submit information to complainants, the recipient and to EPA, but they have no "party" status in the investigation or in ADR. Their self-styled "motion to intervene" is improper and unprecedented and should be rejected.



Finally, it's worth noting that time and again, members of communities living in proximity to confined animal feeding operations (CAFOs) have struggled to gain access to information. The Pork Councils have not stood up for transparency during those efforts. Recently, for example, the Pork Councils failed to support community opposition to House Bill 405, a bill that penalizes whistle-blower activities on CAFOs, Property Protection Act, H.R. 405, Gen. Assemb., Sess. 2015 (N.C. 2015) (enacted), or Compact/Balanced Budget, H.R. 366, Sess. 2015 (N.C. 2015), which prohibited disclosure of records related to the investigation of complaints concerning agricultural operations. N.C.G.S. § 143-215.9D (2014).

Please feel free to reach either of us to discuss this matter.

Sincerely,



---

Marianne Engelman Lado  
Earthjustice

Elizabeth Haddix  
UNC Center on Civil Rights

CC:

(b) (6) Privacy, (b) (7) [REDACTED], NCEJN

(b) (6) Privacy, (b) (7) [REDACTED] REACH

(b) (6) Privacy, (b) (7)(C) [REDACTED] Waterkeeper Alliance, Inc.

Sam Hayes, General Counsel, NC DEQ

(b) (6) Privacy, (b) (7)(C) [REDACTED] Mediator

(b) (7)(C) [REDACTED] Jeryl Covington, EPA

Gerald Yamada, Thomas R. Brugato, Covington & Burling LLP

Benne C. Hutson, Eugene E. Matthews, III, Christopher E. Tribble, McGuire Woods LLP

Michael Formica, NPPC

## **Exhibit 6**







## **Exhibit 7**



**DECLARATION OF** (b) (6) Privacy, (b) (7) (C) Personal Privacy

1. My name is Devon Hall. I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

**Background**

2. I am African-American. I live at (b) (6) Privacy, (b) (7)(C) Personal Privacy in Warsaw, Duplin County, North Carolina. (See Attached Map.) I have lived at this address for thirty-two years and I own my home. I live alone. I am (b) (6) Privacy, (b) (7)(C) P I years old.

3. I am a (b) (6) Privacy, (b) (7)(C) Personal Privacy at the Rural Empowerment Association for Community Help (REACH) organization. The REACH office is located at 2398 West Wards Bridge Road in Warsaw.

4. REACH strives to improve the quality of life for families and people of color in rural eastern North Carolina. In particular, REACH addresses social, economic and environmental issues of families and people of color in Duplin, Sampson and Bladen counties in eastern North Carolina. REACH's programs include environmental awareness, sustainable agriculture, small business development, and homeownership, among other things.

5. My primary goals as (b) (6) Privacy, (b) (7)(C) Personal Privacy for REACH are to protect, educate and collaborate with the people that I serve.

REACH serves over 800 southeastern residents through its various programs. In my current role at REACH, among many other tasks, I (b) (6) Privacy, (b) (7)(C) Personal Privacy REACH and the surrounding community; build relationships between REACH and other non-profits, as well as county and state government; make presentations at local and regional meetings; plan meetings; and coordinate studies and testing relating to the effects of industrial hog farming on the surrounding community and environment. Those studies include testing for hog related MRSA (Methicillin-resistant Staphylococcus aureus) among hog farm workers and water sampling.

#### **REACH's Efforts to Change Hog Farm Practices in North Carolina**

6. (b) (6) Privacy, (b) (7)(C) Personal Privacy U.S. EPA to address the impacts of CAFOs on people and the environment in southeastern North Carolina. The project title was Duplin Environmental Health Awareness Project (DEHAP). With this funding, (b) (6) Privacy, (b) (7)(C) Personal Privacy REACH, were able to have a listening session where we asked what people's concerns were and they shared their experiences with living near industrial hog farms in eastern North Carolina.

7. Under DEHAP, twelve individuals were selected to act as Advisors to REACH to be our environmental eyes and ears in the community. They act as concerned citizens with a strong sense of stewardship and caring for the water, earth and air. When the grant ended a year later, the group decided to continue with

or without funding. The group meets regularly with approximately 20-30 other grassroots community members.

8. Originally, DEHAP arose out of organizing that I did in collaboration with (b) (6) Privacy, (b) (7)(C) Personal Privacy

(b) (6) Privacy, (b) (7)(C) Personal Before I started organizing, I knew it smelled bad where I lived, but I didn't know about other places. It was only until after I talked to people in different areas within Duplin County that I realized how bad it was for so many people. Residents were angry because of the stench that they endure, that is not caused by them. From my own observation, it appears that the hog growers don't care about how bad the smell and pollution from their farms effect their neighbors.

9. In 2006, REACH received an EPA Collaborative Problem Solving Grant to join together the grassroots community with businesses and government to address environmental problems. Under this grant, DEHAP constituents met with other stakeholders to discuss how industry has contributed to pollution in eastern North Carolina.

10. On April 10, 2007, REACH invited our membership to come along with the organization leadership to testify about the impacts of hog farms on the environmental and their personal well-being. The testimony was delivered at a convening of the National Commission on Industrial Animal Production in Durham, North Carolina. Five REACH members testified at the meeting. Other

EJ partners, including (b) (6) Privacy, (b) (7)(C) Personal Privacy from the North Carolina Environmental Justice Network, and (b) (6) Privacy, (b) (7)(C) Personal the then Lower Neuse Riverkeeper and now CAFO coordinator for the Waterkeeper Alliance testified as well regarding the effects of industrial hog farms on communities and the environment. The transcript of the hearing is accessible here: [http://www.ncifap.org/\\_images/NC\\_Public\\_Meeting\\_Transcript\\_.pdf](http://www.ncifap.org/_images/NC_Public_Meeting_Transcript_.pdf). Because of events like this and REACH's work investigating more about the issue, I know people who have suffered terribly living near industrial hog farms. I know about hog related MRSA (Livestock-Associated Methicillin and Multidrug Resistant Staphylococcus Aureus) and its impacts as well from a study I worked on. I'd like to see better use of available technology, like wastewater treatment plants, to clean up the wastewater associated with the hog farms. I am concerned about the cost to the environment from the industrial hog farms and the health of the people who live nearby.

11. I believe that additional work needs to take place to make significant systemic changes in how industrial farms operate and how they are regulated. DEHAP Advisors and other concerned citizens have agreed to continue to meet until the water, air and soil are cleaned up and are no longer affecting people's health. Right now, DEHAP meets monthly to discuss these issues and to reach out to the community.

12. REACH water sampling includes testing for markers that we think indicate diminished water quality in the watershed. Specifically, we have tested streams in the watershed for E. Coli., MRSA, fecal coliform and enterococcus. We informally submitted this data to the North Carolina Department of Environment and Natural Resources (DENR) to have one watershed in particular, Maple Branch, added to the 303(d) list. As of today, that water body has not been added to the state's list of impaired water bodies, and REACH plans to continue to advocate for its inclusion.

13. Through REACH, I have traveled extensively in neighboring communities and across the country, to New York, New Orleans, Denver, Washington, D.C., Los Angeles, Atlanta, and to meetings of the National Environmental Justice Advisory Council ("NEJAC") with other members of the community to voice our concerns regarding the negative impact of industrial hog farms in eastern North Carolina.

#### **Personal Experience with Hog Facilities**

14. Nearly everywhere I am, whether at home, or at the REACH office, the hog farms are around me.

15. The closest Concentrated Animal Feeding Operations (CAFO) to my home and my office are less than a mile away.

16.

(b) (6) Privacy, (b) (7)(C) Personal Privacy

(b) (6) Privacy, (b) (7)(C) Personal Privacy

17. There are many industrial animal operations, including but not limited to hog houses, near the REACH office. There are five farms south of the office. From a two-mile radius west of the office, there are two hog farms. There are about four hog farms southeast of the office. Going east, up (b) (6) Privacy, (b) (7)(C) Personal Privacy there are six hog farms. Northward, there are about five more. I know this because I have conducted tours, and because I was born and raised in the area.

18. We hold DEHAP meetings at the REACH office and we almost always hold the meetings inside because of the smell. If we serve food, we have to come inside because we don't want to eat food that smells as bad as the air.

19. I also know the area well because I have walked along the creeks, in the woods, and I've hunted and fished in the area. I have a few dogs and I also still hunt. I used to take pride in freshwater fishing and catching fish. A while ago I started to see fish with sores on them. I threw them back in the water. I believe these negative changes can be attributed to the industrial farms in the area.

20. In the past, before expansion of the industrial hog farms, my family had a lot of cookouts outside at my home. I am from a large family, and am the middle child of seven siblings. All of us live in Duplin County. I have several nieces and nephews. I even have a heavy duty picnic table because of all the

cookouts. Now, even with family reunions, we have to find a place indoors because of the flies and the stench. We also have visitors who can't tolerate the smell.

21. I have been on county water for about 15 years. I was on well water before that. I switched over to the county water when they were installing the lines because the local government offered a discounted rate on the meter. I paid the application fee and although I wasn't planning on using it, I knew it was there. One day my well-water pump wasn't working properly. It was easier to cut my line to the pump and get hooked up to the county water than to fix it. Even though I have a choice, I would not go back to using well water in Duplin County. There are so many CAFOs close by and so many lagoons in Duplin County, that I don't think it is a good idea to drink the water from the well. I believe that the lagoons leak into the aquifer. If the well is shallow — which I believe it is because when I drilled the well, I found that I could get water at 38 feet — I think that the hog waste pollution leakages would enter the aquifer and pollute my well.

22. The outreach I've done and the research I've read has made me more concerned about the negative health impacts that CAFOs bring to my community

23. It's my understanding that there are over 500 active hog farms in Duplin County. Out of these, very few are owned by Black people. There is nowhere in this part of the county that people can get away from the stench of a



CAFO. The bad smells also come from trucks that haul the hogs around.

Sometimes there are trucks filled with dead hogs that pass by and the trucks smell even worse than the swine lagoons.

24. I strongly believe that anything that smells this bad cannot be healthy. If I drive to church, to a school, or to the store, the odor gets in my car. I don't have to be a lawyer to know that something is wrong with this picture. I have children and grandchildren, and I want for them to have a better life. I think it's a God-given right to have clean air and clean water. No one should be able to profit at the expense of their neighbor's health and well-being, which I believe is happening due to the poor regulation of industrial hog farms in eastern North Carolina.

25. It is my understanding that there are bacterial and other viral problems associated with CAFOs that my neighbors and I may be exposed to. There are also health issues from the super viruses that are created which need to be addressed.

26. Being raised in an agricultural county, and having seen other agricultural facilities operate, I know that there are drain tiles underneath the ground of the fields which, when combined with hog waste, also concern me. On any new ground that's been cleared, before they plant, drain tiles are installed to have excess water run downhill. This prevents the crops from drowning. If the farmer sprays hog waste on a field and there are subsurface drain tiles, the water

seeps through the ground to the drain tiles and into ditches. This water then runs into a bigger ditch and keeps running until it reaches a nearby creek or stream.

27. I think the hog industry is very influential in the local and state government. The permits are issued without enough questions and clarity from DENR. I don't think DENR analyzes the permits well enough. To be specific, hog lagoons should not be in a flood plain. In addition, using clay alone as a lining for the lagoons definitely allows leaching, as they do currently.

28. The smell and pollution from CAFOs are problems that DENR should better address.

29. Within the last year I have seen overrun dead hog boxes that attract buzzards.

30. I believe that the way that the state allows the hog facilities to operate is a civil rights issue because, as stated previously, of the over 500 farms that I know of, only two or three are owned by Blacks, but the location of the hog farms are all near Black communities. These hog farms are not near gated communities and golf courses. It is an injustice to people of color. I believe that communities of color have been targeted because the power structure assumes that communities of color won't pull together to address this issue. Because it is our land, I believe that the current laws are intentionally lax to support the industry.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in (b) (6) Privacy, (b) (7)(C) Personal Privacy, North Carolina on August 30, 2014.

Signe

(b) (6) Privacy, (b) (7)(C) Personal Privacy

Address: (b) (6) Privacy, (b) (7)(C) Personal Privacy

Addressee: (b) (6) Privacy,  
(b) (7)(C)

Map radius: Approximately 2 miles

Source: Google Maps

(b) (6) Privacy, (b) (7)(C) Personal Privacy



## **Exhibit 8**

## **DECLARATION OF (b) (6) Privacy, (b) (7)(C) Personal Privacy**

1. My name is (b) (6) Privacy, (b) (7)(C). I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

### **Background**

2. I am African-American. I live at (b) (6) Privacy, (b) (7)(C) Personal Privacy, Duplin County, North Carolina. (See Attached Map.) I am (b) (6) Privacy, (b) (7)(C) old. I have lived at this residence since I was born. The property is in my name. I do not work because I have a disability.

### **Experience Living Near the Hog Facilities**

3. There are at least ten hog farms within two miles of where I live.
4. I remember when farmers used to raise hogs in the field. My mom and dad had plenty of hogs when I was growing up. My family had about 40 hogs. I remember being able to smell the hogs when I was near their pen or when I went out to feed them, but I couldn't smell them when I went outside the house, like I can with the large, industrial hog farms that moved in near my home.
5. I have told the hog farm owners near me about my concerns on many occasions, but it hasn't changed things.



6. I want them to clean up and to stop spraying waste where it gets into my yard and my water, and to make it not smell so bad.

7. When I found out that I could get my water tested for free by the state, I called and had it tested. This was several years ago. Within a week after my water was tested, the state told me that I couldn't drink or cook with it, and I couldn't let my pets drink the water. I don't recall the individual who did the testing, or the specific problems that were discovered, but I know I was told to discontinue using the water. After my water was tested, the same hog farmer near me found out about the results. I am not sure how he found out, but soon after the state tested my water and told me that it was unsafe to use, that farmer came back with their industry spokesperson and asked me a lot of questions as if they were trying to make it seem like I was out to get the hog farmer. This upset me a great deal. I think that the farmers were trying to intimidate me. They went behind my house and told me that the source of contamination came from my two month-old puppies. They also tried to make it seem like I had hogs on my land now, but I did not have any farm animals on my land. I felt like these men were trying to take advantage of me because I am a woman. They said that I did not know anything about farming, but I do know about farming because my family farmed.

8. The industry spokesperson asked me if I have ever thought about moving. I felt that they were telling me that if I didn't like the hog farms, then I

should move. I lived here before them, however, since 1943, and I have no intention of moving.

9. When I was growing up, in the forties, I never could have imagined that waste lagoons would be near people's churches or homes. That has all changed now. I attend (b) (6) Privacy, (b) (7)(C) and we can smell the hog waste inside and outside the church. There's also a bad fly problem near the church, which I think is related to the hog farms.

10. I'd like to be able to relax outside of my home, but I can't sit on the porch due to the strong hog waste odor. Every morning I start out by seeing how strong the smell is outside, to see if I will be able to go outside. Whenever I have visitors, the length of their stay depends on how strong the smell is that day. There are always big flies associated with the smell.

11. Sometimes I need to hang my clothes outside to dry. When the farmer sprays the hog waste, however, I always have to rewash my clothes if I don't get the clothes in off the line soon enough. This is because the smell of the waste gets into my clothing if I leave it on the clothesline.

### Health Concerns Regarding the Hog Facilities

12. When I smell the hog farms it makes me sick to my stomach and I throw up. Several years ago, I went to the doctor in Kinston because of my (b) (6) Privacy and the doctor told me that I had a (b) (6) Privacy, (b) (7)(C). He did not say what it was caused by, but I think living near all these hog farms made it worse.

13. When my grandson was young, from when he was one year old to eight years old, he had a bad allergic reaction to the hog waste smell. When he came to visit, he would have a (b) (6) Privacy, (b) (7)(C), and sometimes would gag at the smell. His (b) (6) Privacy, (b) (7)(C) went away when he left my house and returned to his home, where it didn't smell like hog waste. He is (b) (6) Privacy, (b) (7)(C) old now.

14. My home is hooked up to county water now. We used to have well water until it was tested and found to be contaminated. It was tested out of Wilmington with the Division of Water Quality. After my well water was turned off due to the contamination, county water was not yet available at my house. I had to buy water at the store, or get water from other people who did not have contaminated water. Each time I did this I had to carry 10-15 lbs. of water. On top of all this, it was a financial hardship to purchase water. It wasn't in the budget then and it still isn't now. I had to buy water or find a way to get safe water for free for about a year. When a county water hook-up was accessible, I had to pay to hook up to it. The

fee was between \$50 and \$100 for that service. I still question if there could possibly be breaks in the line where hog farm runoff could enter the pipes. Because of this, I am still afraid to drink my water.

My Efforts to Change Hog Farm Practices in North Carolina

15. I have participated in legislative activities and vigils in Raleigh, North Carolina with the Rural Empowerment Association for Community Help (REACH) organization. This was in 2007.

16. I also attend meetings at REACH about the hog farms. I have attended meetings about the issue at my church as well. I have talked to others in my community about the issues caused by the hog facilities.

17. If there was one thing I could do to fix the problems created by hog farms, including the smells, the flies, and the water quality damage, it would be to bring back family farms. I don't want to put large farmers out of business—I just want them to be good neighbors.

18. Hog farming has a greater negative impact on Black families. From what I have seen and heard from talking to others who live in eastern North Carolina, and from my own personal experience, the hog facilities are always set up around Black families and Black communities.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in (b) (6) Privacy, (b) (7)  
(C) Personal Privacy, North Carolina on September 22, 2014.

Signed (b) (6) Privacy, (b) (7)(C) Personal Privacy

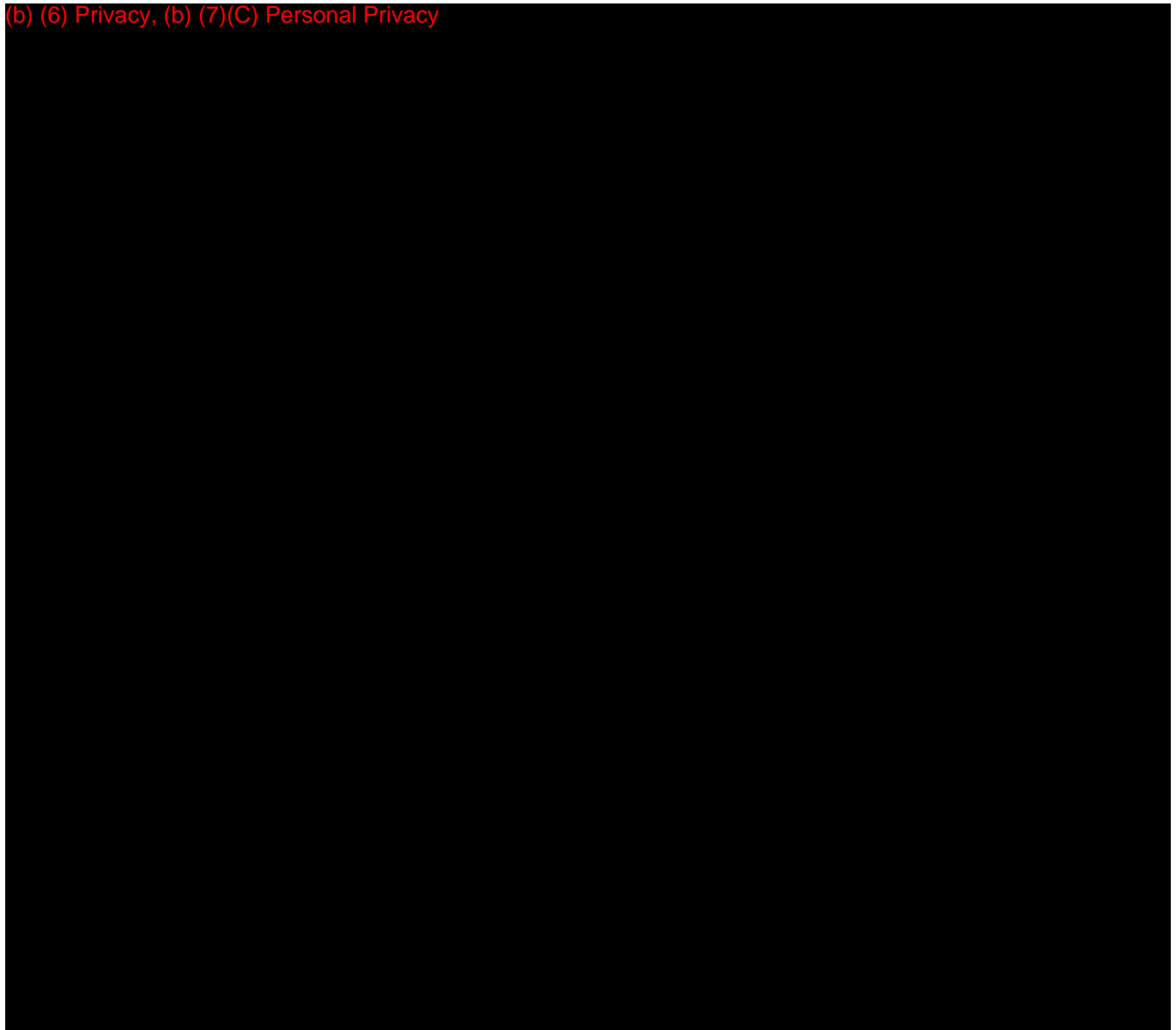
Address: (b) (6) Privacy, (b) (7)(C) Personal Privacy

Addressee: (b) (6) Privacy,  
(b) (7)(C)

Map radius: Approximately 2 miles

Source: Google Maps

(b) (6) Privacy, (b) (7)(C) Personal Privacy





## **Exhibit 9**

## DECLARATION OF (b) (6) Privacy, (b) (7)(C) Personal Privacy

1. My name is (b) (6) Privacy, (b) (7)(C). I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

### Background

2. I am African American. I live at (b) (6) Privacy, (b) (7)(C) in (b) (6) Privacy North Carolina. My house is built on land that my family has owned since 1891. I was raised on this land with my family and have lived here for more than half of my life. After graduating high school, I moved to New York City to work in the banking industry and stayed for 27 years. I returned to (b) (6) Privacy in March of 1993 to care for my mother and have lived here ever since.

3. My family owns over 60 acres of land in (b) (6) Privacy, North Carolina. My grandfather purchased one tract of land in 1891, and three tracts of land in 1897. Our land stretches from (b) (6) Privacy, (b) (7)(C) Personal Privacy to the south, as shown in the map attached as Exhibit 1.

4. In the late 1980s, a hog facility was built next to our homes on land we believe is ours. As shown in the map attached as Exhibit 2, the hog facility is located between (b) (6) Privacy, (b) (7)(C) Personal Privacy, off an unmarked road west of (b) (6) Privacy, (b) (7)(C). The hog facility consists of two hog houses, a manure storage lagoon, and sprayfields. The sprayfields are located a few feet south of

(b) (6) [REDACTED], the waste lagoon is south of the sprayfields, and the hog houses are south of the lagoon, near (b) (6) Privacy, (b) (7) [REDACTED].

5. A few of my family's homes are close to the sprayfields.

6. My now-deceased mother's house is located a few yards east of the sprayfields. Her house is marked as number 2 on the map attached as Exhibit 3. My mother lived in the house with my now-deceased brother, (b) (6) Privacy who had (b) (6) Privacy, (b) (7) [REDACTED] and was not able to care for himself.

7. My house is a few feet north of my mother and sister's houses. My house is marked as number 1 on the map attached as Exhibit 3. My yard joins my mother's yard and my sister's yard. Although I own the house marked as number 1, I currently live in my mother's house. My niece, (b) (6) Privacy, (b) (7)(C) Personal, lives in my house.

8. My now-deceased sister's house is a few feet east of my mother's home. My sister's house is marked as number 3 on the map attached as Exhibit 3. My sister's daughter, my niece, now lives in this house.

9. My nephew, (b) (6) Privacy, lives in a mobile home to the east of my house. His home is marked as number 4 on the map attached as Exhibit 3.

10. My nephew, (b) (6) Privacy, lives on the north side of (b) (6) Privacy (b) [REDACTED], directly across from the sprayfields. His house is marked as number 5 on the map attached as Exhibit 3.

11. Given how close my family lives to the hog facility, and the sprayfields in particular, many members of my family, myself included, have been exposed to the odor and harmful pollutants that come with raising animals in confinement.

**Experience Living Next to the Hog Facility: Early 1990s**

12. The hog facility was built in 1986, but the farmer did not begin spraying waste on the sprayfields next to my mother's house until the mid-1990s. Before that time, he sprayed the waste farther away from our homes. In those early years, the farmer used a large sprayer that was hooked up to a tractor. It was difficult to control where the spray would land with this system. Back then, there were no trees separating our houses from the sprayfield. As a result, when the wind picked up, the manure, urine, and other waste that was being sprayed on the field was easily carried over to where my mother, sister, nephews, and I live.

13. I remember the first time we experienced the farmer spraying the waste. It was a Saturday, and I was with my mother, brother, and nephew (b) (6) Privacy at my mother's house. We were sitting on my mother's screened-in porch, enjoying being outside as we had done for years. As we were sitting there, I noticed the farmer bring over the tractor with the sprayer hooked up, then disappear. Just as I was thinking to myself that there was no way that he would begin spraying so close to us, I heard a bursting sound. The sprayer had begun to

pump waste in our direction. We had to scramble to get out of the way. My mother, brother, and I took refuge in my mother's house, and (b) (6) Privacy retreated to his house across (b) (6) Privacy (b). The waste had this terrible, raw, stinking odor that we had never before experienced. We could still smell it when we were inside. The spraying continued, and the waste was blown right onto the side of my mother's house. My mother's kitchen, my brother's room, and the bathroom all face the sprayfields. If the windows were open, the waste would have landed in the house.

14. My mother's house was not the only one inundated with the waste in those years. The waste also blew into the storm door near the front of my house. I had to keep my door closed otherwise the waste would get into my home. My sister and I couldn't hang our clothes out in our yards because when the farmer sprayed, we could feel the waste mist on the clotheslines.

15. In those years, I spoke to the hog farmer about my concerns about the foul smelling hog waste that he was spraying on the fields. I told him that the waste was blowing over to our property, landing in our yards, and pounding our homes. The farmer told me that the hog houses were his investment and that he had to spray to protect that investment. He seemed mad that I had approached him with our concerns.

16. Because the farmer did not do anything to stop the waste from blowing onto my family's property, I called the Sheriff's Department, who informed me that they could not get involved in the matter. They told me that the Health Department in Kenansville would handle my complaint. When I spoke with someone at the Health Department, I was informed that I would have to call the Department of Environment and Natural Resources ("DENR") in Wilmington, because they dealt with problems like mine. In total, I called or wrote letters, or both, to the Governor, the State and Local Health Department Directors, the Attorney General of the State of North Carolina, the United States Justice Department, DENR, the local Sheriff, the County Commissioners, the United States Environmental Protection Agency, and United States Representative Mike McIntyre's office.

17. I made so many complaints that the county lawyer, who also was working with the hog industry in Duplin County, wrote me a letter saying that if I continued to make what he called groundless complaints, particularly to DENR, that I could be made to serve time in jail or would have to pay the hog farmer the money he was losing because of my complaints.

18. The hog farmer and his son also threatened me and my family and tried to get us to stop making complaints. One time in the late 1990s, or early 2000s, the hog farmer came over waving a stick, warning me not to make what he



called baseless claims. His son came over twice with a gun. One Saturday, the hog farmer's son entered my mother's house, uninvited, and shook the chair that my mother was sitting in and started cursing at her. He yelled that he could do anything to me that he wanted to and get away with it. At the time, my mother was (b) (6) Privacy, (b) (7)(C), so needless to say this was traumatic for her and my family.

19. In my attempt to stop the hog farmer from spraying waste on me and my family, I collected evidence of the spraying. One day, when the farmer was spraying, I stood in front of my house, near where my yard and my mother's yard meet, and began to videotape the spraying. As I was taking the video, the hog waste being sprayed on the fields hit me in the face, landing on my lip. I was immediately concerned about the bacteria and chemicals in the waste, so I ran inside and scrubbed it off.

20. The farmer has made changes that are supposed to allow us to co-exist. In the late 1990s the hog farmer started using a stationary sprayer, with a pivoting head, instead of the tractor sprayer. The stationary sprayer is supposed to control the flow of waste better. In 1999 or 2000, at the urging of my local government representative, Carrol's Foods, which supplied animals to the farmer, planted trees between my family's houses and the sprayfield. Later, in April 2002, the hog farmer had a v ditch dug to separate what he believed is the property line, to settle a dispute about whether I had been trespassing on land that he claimed was

his. The changes are supposed to make it easier for us to live peacefully next to the hog facility, but my family and I are still suffering.

**Experience Living Next to a Hog Facility: 2003 to present**

21. I was told that the stationary sprayer would prevent the waste from coming on to our land, but the spray still reaches my family's homes to this day. At times, (b) (6) Privacy (b) is wet with waste from the sprayer. Cars driving by the sprayfield and my house have to be careful to keep their windows closed to keep the waste out. When the wind picks up, the waste can blow across (b) (6) P 1 (b) into my nephew (b) (6) Privacy yard.

22. The trees also do not keep the waste from coming on to our property. The wind still carries the waste to our homes, and I still smell the terrible, raw odor of the waste. In fact, in recent years, the trees have been dying, and I can see right through to the sprayfields.

23. Even with the stationary sprayer and the trees, my family and I are still exposed to harmful pollution. People in the health field continue to warn me not to open the windows when the farmer is spraying, especially when I am cooking. Scientists at the (b) (6) Privacy, (b) (7)(C) Personal Privacy, and at (b) (6) Privacy, (b) (7)(C) Personal Privacy, have cautioned me that particles that are too small for me to see or feel can travel through the tree line, and make me sick.

24. It's challenging just living near a hog facility. When the farmer is spraying, I try to stay indoors as much as I can, but sometimes I need to leave my house and run errands and live my life. If I have to go to my car when the farmer is spraying, I will hold my breath, cover my mouth with a perfumed mask or perfumed paper towel, and run to my car as fast as I can.

25. I can't stay outside for very long when the farmer is spraying. I get headaches, have trouble breathing, and get depressed that no one is trying to understand what we are dealing with, living next to a hog facility that sprays waste on us. Clean air is a God given right, but it's a right that my family and I are being denied.

26. I know that pollution from a hog facility can cause respiratory and heart problems, and am lucky that I have not yet suffered from these problems. I try to take precautions to make sure that I stay healthy, and counteract any of the effects of living so close to the hog facility. I avoid spending any time outside when the farmer is spraying, and make sure to keep my windows and doors tightly closed. I also eat right and exercise.

27. Although I like to exercise and stay active, I have to adjust my exercise schedule to account for spraying at the hog facility. I enjoy taking long walks or biking, often with my nephew, (b) (6), who lives across the street. If the farmer is spraying when we want to go for a walk or a bike ride, we will change

our route, making sure to walk or bike in the opposite direction of the sprayfield and the wind that could carry the spray towards us. We also make sure to wear a mask to protect us from the spray. Sometimes we will set out on a bike ride or for a walk when the farmer is not spraying, but, by the time we return, he might be. We plan for those occasions, always making sure to bring along something to cover our faces, like a perfumed mask or a perfumed paper towel, so that if the farmer is spraying when we get back, we will be protected.

28. Living next to a hog facility also has affected my family's health and quality of life. My mother lived on the land from the time she was born in (b) (6) Privac until she passed away in (b) (6) Privac. My brother, (b) (6) Privac lived on this land from the time he was born until he passed away in (b) (6) Privac. When the spraying began in the 1990s, both my brother's and mother's lives changed for the worst. Both my mother, who was advanced in age, and my brother, who had (b) (6) Privacy, (b) (7)(C) Personal and was crippled with (b) (6) Privac had trouble getting around and often stayed in or near the house. Although we had window air conditioners, they enjoyed sitting outside in the summer when there was a breeze. But when the hog facility moved in, it was not safe to be outside. In the early years, the waste from the sprayers hit the house and could have hit us if we were outside. Even after the farmer changed his sprayers, it was not safe to sit outside and breathe in the pollution from the facility. This is especially true for my brother, who breathed through his mouth, and could have

gotten sick if he inhaled the airborne pollution. So, after the hog facility moved in, to avoid the terrible smell and dangerous pollution, my family was forced to stay inside in the summer and spend the extra money to run our window air conditioners.

29. Since the hog facility moved next door, my family and I have been concerned about our water supply. We used to get our water from a shallow well on our property, but we knew the hog waste was blowing over the well and could be contaminating our water. When we finally had the opportunity to connect to the County's water supply, we immediately signed up. Because we signed up early, we only had to pay \$50 for the connection. But now instead of using the well for our water supply we have to pay a monthly water bill.

30. My family used to be able to live off this land. We would hunt on the land, and fish in (b) (6) Privacy, (b) (7)(C) Personal. Since the hog facility moved in, our way of life has changed. We lost access to a lot of our land, which we are fighting to regain. For right now, given that the farmer has taken over a lot of our land, we don't have access to the (b) (6) Privacy, (b) (7)(C) Personal anymore, and we can't get to the land where we used to go hunt. Putting aside issues of access, even when we see animals, like deer, we are concerned about the contaminants that they might have been exposed to, and if they are safe to eat. Since the hog facility moved in, I also have noticed that there are fewer squirrels and rabbits than when I lived here as a child. I am not sure if



the animals are dying because of the pollution from the hog facility, but I do know that the environment has changed.

### **My Efforts to Change Hog Farming Practices in North Carolina**

31. Given all of the problems my family and I have experienced living next to a hog facility, I have long worked with others, including the North Carolina Environmental Justice Network (“NCEJN”) and the Association for a Responsible Swine Industry (“ARSI”), to change the way hog farms are allowed to operate. I started working with NCEJN around 2000 or 2001. I have worked with ARSI since the late 1990s, around the time when North Carolina enacted the moratorium against constructing or expanding hog farms of a certain size.

32. With NCEJN and ARSI, I have lobbied the Capitol and asked our legislators to control the toxic pollution from the hog farms. On one trip in June 2007, we camped out on the lawn in front of the Capitol and kept vigil. We brought along a mock hog facility, complete with a mini lagoon holding actual swine waste and a sprayfield. The elected officials began avoiding us on the lawn, noting the terrible smell. One security officer even threatened to have us removed for bringing the swine waste, which he claimed was “toxic material.” He even told us that if we spilled any of the waste, we would be fined \$1,000. I want everyone to recognize that hog farms are spewing toxic material on me and my family and others who live next to hog farms.

33. I know that there's a better way to raise livestock and dispose of the waste than simply digging a hole in the ground. As far back as the early 2000s, the Smithfield Study came up with five alternatives to the lagoon and sprayfield system, but the industry complained about the cost. Those of us living near these facilities need the industry to adopt better waste controls. The industry cannot be allowed to continue to dump toxic material into our air and water.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in (b) (6) Privacy, (b) (7)(C) Personal North Carolina on April 18, 2014

(b) (6) Privacy, (b) (7)(C) Personal Privacy

## EXHIBIT 1

(b) (6) Privacy, (b) (7)(C) Personal Privacy



## **EXHIBIT 2**

(b) (6) Privacy, (b) (7)(C) Personal Privacy



## EXHIBIT 3

(b) (6) Privacy, (b) (7)(C) Personal Privacy



## **Exhibit 10**



# Social Responsibility and Research Ethics in Community-Driven Studies of Industrialized Hog Production

Steve Wing

Department of Epidemiology, School of Public Health, University of North Carolina, Chapel Hill, North Carolina, USA

Environmental health research can document exposures and health effects that result from inequitable relationships between communities of low income or people of color and the institutions that derive benefits (profits, federal and state funding or services, avoidance of wastes) from activities and policies that burden these communities. Researchers, most of whom work in relatively privileged institutions, are placed in situations of conflicting loyalties if they conduct research in collaboration with, or on behalf of, communities burdened by environmental injustices. These conflicts can threaten the self-interest of researchers and may raise social and ethical issues that do not typically arise in research projects that respond to the agendas of institutions. This article describes how we addressed issues of research ethics and social responsibility in environmental health research on industrialized hog production in North Carolina. Researchers and institutional review boards are not well prepared to address ethical issues when interests of entire communities, as well as individual research participants, are involved. Community-driven research partnerships can help address problems in research ethics and can enhance the social responsibility of researchers and their institutions. **Key words:** African Americans, agriculture, confidentiality, environmental justice, livestock, swine, water pollution. *Environ Health Perspect* 110:437–444 (2002). [Online 22 March 2002] <http://ehpnet1.niehs.nih.gov/docs/2002/110p437-444wing/abstract.html>

Most environmental health research has been conducted in relation to problems identified by governments, industries, health professionals, and the scientific community. These institutions have some degree of prestige and power; they have played an active role in developing environmental health science itself, and their members are seldom forced to live with serious environmental contamination. In contrast, communities of low income and people of color seldom have had access to researchers; they have been underrepresented in the research professions (1), they have been used as test subjects for biomedical research (2), and they sometimes have had no choice but to live and work in the presence of contaminants (3). Environmental health research that takes as its starting point the experiences and concerns of communities of low income and people of color raises numerous questions regarding methodology (the formation of study hypotheses, research design, analysis, interpretation, and communication of findings) as well as ethical issues related to the role of professionals and academic and government institutions, responsibilities for communication, respect, collaboration, protection of human subjects, and protection of the communities in which research is conducted.

In this article I describe environmental health studies of industrial swine production facilities conducted by a community-driven research and education partnership. I use these examples to explore ethical issues that arise in community-driven research conducted in the setting of gross inequalities between powerful institutions and communities exposed to environmental injustices.

Industrial agriculture in general, and pork producers in particular, have strong ties to government and academic institutions (4). Researchers can face ethical and legal dilemmas that arise from conflict between groups that create and permit industrial operations and their contaminants, and the communities living with the industries and contaminants. Recognizing the distinction that epidemiologists have drawn between biomedical research focused on individuals and public health research conducted from a population perspective (5), I conclude that community-driven research involves analogous ethical dimensions regarding autonomy and risk of harm to entire communities, not simply to individual research subjects whose welfare is the traditional domain of institutional review boards (IRBs).

## Background

In the early 1990s, news stories appeared in rural Halifax County in northeastern North Carolina (6,7) announcing that the historically underdeveloped southeast region of the county was slated for 17 new industrialized hog production facilities that would bring economic development to a predominantly African-American and low-income population.

Public reaction was slow to emerge. Most rural residents of this area are familiar with raising hogs on family farms. However, citizens soon began to learn that industrialized production operations are nothing like family farms. Far from being independent businesses, confined animal feeding operations (CAFOs) are generally owned by or run

under contracts with large corporations that control the animals, feed, veterinary supplies, and management plans (8). If the operation is run under contract, the contractor owns the buildings, equipment, land, and waste but not the animals. Some CAFOs raise hogs from birth to market weight, whereas others are designed for only one stage of an animal's life: birth to weaning, weaning to about 40 pounds, or 40 to about 250 pounds, the weight at which hogs are typically slaughtered. The corporate integrator trucks its hogs between CAFOs that are specialized for growing animals of each size.

Swine CAFOs house thousands of hogs in close confinement in large buildings (Figure 1). Subtherapeutic doses of antibiotics are used to control infection and promote growth. Large ventilation fans exhaust dusts and gases that pose health risks to the animals and workers. Animal waste falls through slats in the floor and is washed into cesspools called lagoons. There the waste undergoes anaerobic decomposition; the remaining liquids are subsequently sprayed on nearby fields (Figure 1).

The rapid growth of industrialized hog production in North Carolina occurred between the middle 1980s and the late 1990s (9). As hog production in the state expanded from less than 3 million to approximately 10 million hogs per year, the number of operations shrank dramatically as smaller independent family farmers were replaced by industrial-style operations. At the same time, hog production, which had previously been distributed across the state, became concentrated in eastern North Carolina (9). Expansion of industrial operations occurred under regulatory controls strongly influenced by hog producers and other agribusiness interests in the North Carolina General Assembly. State legislation was enacted to

Address correspondence to S. Wing, Department of Epidemiology, 2101F McGavran-Greenberg Hall, School of Public Health, CB#7435, University of North Carolina, Chapel Hill, NC 27599-7435 USA. Telephone: (919) 966-7416. Fax: (919) 966-2089. E-mail: [steve\\_wing@unc.edu](mailto:steve_wing@unc.edu)

This research was supported by the National Institute of Allergy and Infectious Diseases Grant Program on Research Ethics 1T15 AA149650 and by National Institute of Environmental Health Sciences grant R25-ES08206-04 under the Environmental Justice: Partnerships for Communication program.

Received 24 October 2001; accepted 25 January 2002.

prevent local and county governments from zoning agriculture, and research support was provided by state universities closely allied with agribusiness concerns (10).

As citizens of Halifax County began to learn about industrialized hog production, many became deeply concerned about local impacts of such “economic development.” They worried about air pollution and noxious odors. They feared that groundwater could be contaminated in an area with sandy soils and high water tables where most residents depend on private wells for drinking water. They learned of the potential for surface water pollution from spray field runoff and lagoon failures. They were concerned about loss of independent family farmers and the land that they had farmed, and they were concerned about the vitality of their churches, schools, and communities. They felt they had been targeted for this kind of “economic development” because their primarily African-American, low-income communities lacked political power (11).

The Concerned Citizens of Tillery (CCT), a grassroots organization in south-east Halifax County, worked with county officials to develop an intensive livestock

ordinance that would impose stricter environmental controls than state regulations. In that effort, and in the course of providing assistance to other communities in the path of corporate pork production, CCT sought support from environmentalists, social activists, and researchers who could help document economic, social, environmental, and public health issues affecting communities living with swine CAFOs (11). Although university scientists had conducted many studies related to agricultural technologies, veterinary health, and health of agricultural workers, relatively little research had addressed environmental, social, and health concerns of communities affected by industrial hog production.

### Environmental Injustice in North Carolina's Hog Industry

The siting of a landfill for polychlorinated biphenyls (PCBs) not far from Tillery in predominantly African-American Warren County, North Carolina, in 1982 is often cited as an event that introduced the term “environmental racism” to a national audience (12). Ten years later, CCT and other community-based organizations in eastern North Carolina were beginning to see industrial hog

production as an environmental justice and public health issue. During 1982–1997, leading hog-producing areas experienced greater loss of family farms than did other areas of North Carolina (13). This raises concerns for rural communities because family farms keep money in local economies and help maintain local businesses and services. Biologic and chemical contaminants from swine CAFOs, including bacteria, viruses, nitrates, hydrogen sulfide, and endotoxins, threaten community health when they contaminate air, aquifers used for drinking water, and streams and rivers used for subsistence fishing and recreation (14). Ironically, any health effects occurring from these exposures would be difficult to detect by examining medical records because the communities affected most have little access to medical care. Residents also distrust local health departments and other medical care institutions because of a history of segregation, exclusion, and prejudice (15,16).

### A Community-Driven Research Partnership

Noxious odors—so severe that residents who can afford it sometimes leave their homes to spend especially bad nights in



**Figure 1.** Confined animal feeding operations in eastern North Carolina showing fecal waste pits in the foreground, confinement structures (left and right middle), spray fields, and neighboring homes.



motels—prevent neighbors of CAFOs from enjoying their homes and the outdoors. Odorant chemicals can penetrate clothing, curtains, and upholstery, affecting people long after plumes of emissions pass and subjecting them to possible ostracism at school or in public. One study suggested that hog odors can affect the mental health of nearby residents (17); another suggested that neighbors experience respiratory effects similar to those seen among workers in the confinement buildings (18). Mothers in eastern North Carolina report that their asthmatic children experience episodes of wheezing in the presence of strong plumes from nearby hog operations.

I met numerous residents of low-income, African-American communities who told me that industrial hog operations were increasingly being located in their communities. In one area residents had marked locations of churches, schools, and hog operations on a large map to demonstrate the proximity of African-American communities to swine CAFOs. However, when residents spoke to journalists and government officials about discriminatory patterns in the siting of these facilities, they were frustrated by responses that community observations were anecdotal and did not prove any consistent pattern. African-American and white neighbors of swine CAFOs, frustrated by lack of action from local governments, kept diaries to document odors and health problems, took photographs of waste spills and rotting hog carcasses, and wrote to state and federal officials.

In late 1996, a partnership formed by CCT with the Halifax County Health Department and the University of North Carolina (UNC) School of Public Health received funding from the National Institute of Environmental Health Sciences' (NIEHS) Environmental Justice: Partnerships for Communication program (11). Along with environmental justice education and outreach to communities and medical providers, we were funded to conduct research that, using official records, could quantify systematically the extent to which hog CAFOs and their potential impacts on health and quality of life disproportionately affected communities of low income and people of color (primarily African Americans) in the state. Our aims were to evaluate data for local communities, to consider possible alternative explanations for observed patterns, and to consider data on household water source (well or municipal), because groundwater contamination is an important public health concern.

Although data analyses were conducted at the university, the study questions originated in the exposed communities. Community members participated in evaluating data quality through their knowledge of local CAFOs. In consultation with our community

partners, we made decisions about how to define the study population and data sources, how to choose and define variables for the analysis, and how to interpret results. We augmented our statistical analyses with maps and charts. And we found that hog CAFOs were far more common in poor communities and communities of people of color, that this concentration was more extreme for integrator-owned or contracted CAFOs than for independent operations, and that the pattern was explained only partly by differences in population density. Furthermore, we found that hog operations were concentrated in areas where most people depend on household wells for drinking water (19).

### Reactions to the Environmental Justice Study

We were invited to present our findings at an environmental justice session sponsored by the NIEHS during the annual meeting of the Society of Toxicology in March 1999. The North Carolina General Assembly recently had passed a moratorium on construction of new hog CAFOs (except those using "new technologies"), the governor's office was developing a plan to address environmental problems from the lagoon and spray field system, and industrial hog producers were in the news because of waste spills and impacts of nutrient loading on fish, shellfish, and a recently discovered toxic dinoflagellate, *Pfiesteria piscicida*. The CCT had worked in partnership with numerous grassroots groups and traditional environmental organizations to educate the public about effects of industrial hog production and to provide organizational support to local affected communities. To support these efforts and contribute to the ongoing policy debate, we decided to release information about our findings to the press in conjunction with my presentation at the national meeting. The release was coordinated with the UNC News Service, which routinely prepares stories about topical research when it is publicly presented or published. Several major state newspapers ran stories on our findings.

I immediately received calls from representatives of industry groups who wanted to explain to me how the pork business is run. In their view, it was just good business to select the cheapest land for hog CAFOs—and that just happened to be areas that were rural, poor, and disproportionately African American. I soon learned that one of the industry representatives who called me was a member of the UNC Board of Governors. In early April I received an invitation to appear before the House Agriculture Committee of the North Carolina General Assembly. I was pleased by their interest and excited about the opportunity to address a

group of policy makers interested in our findings. However, when I told CCT Executive Director Gary Grant about the invitation, he explained that the committee included a number of hog producers, was friendly to agribusiness concerns, and was probably not very pleased with our research. I asked Gary to appear with me before the committee.

The UNC-Chapel Hill Associate Vice Chancellor for Government Relations set up a meeting to discuss my impending appearance at the General Assembly with the Associate Dean of the School of Public Health. The administrators stated that they did not want to tell me how to present our research, but they were clearly concerned that I make a good impression at the legislature, which, after all, votes on UNC appropriations. Meanwhile, in Tillery, at the weekly meeting of the Open Minded Seniors, one of CCT's most active member organizations, Gary Grant announced that I had been called to the General Assembly to present our findings on environmental justice, and that I was not likely to be warmly received. Many members of the group were interested in attending the session to support Gary and me as we presented our research. About 30 CCT members traveled to Raleigh to attend the meeting of the House Agriculture Committee on 27 April 1999.

The Associate Vice Chancellor accompanied me to the hearing. The Open Minded Seniors had filled most of the public seating when we entered the hearing room; a couple of dozen lobbyists, staffers, environmentalists, activists, and other spectators stood at the back of the room. After staff members finished setting up the slide projector and providing water for the committee members, the CCT members were the only African Americans remaining in the room. Some committee members had a few technical questions about my presentation, such as why we didn't use more recent income data, and made other remarks about the business logic of locating hog CAFOs in poor areas. Committee members also wanted to know whether state funds had been used for our research. Next, Gary Grant spoke about the policy implications of our work and the urgent need for the North Carolina General Assembly to help citizens of eastern North Carolina living with air and water pollution from hog CAFOs. At one point the Open Minded Seniors began to applaud, which prompted the committee chair to use his gavel to quiet the room with the statement that applause was not permitted. Despite this admonition, the Open Minded Seniors had made their support for us clear to all present.

At the end of the hearing, I spoke cordially with the committee chair and a number of spectators, including one industry lobbyist.

Then I was approached by another industry lobbyist who introduced himself by handing me his business card. He refused my offer to shake his hand, demanded a copy of our full report, and said that if I did not send him one immediately I would be facing a lawsuit. I was startled by his hostility but shrugged it off as an overreaction.

## The Rural Health Survey

In addition to the environmental justice study, we were also involved in more traditional health effects research. In the fall of 1998, with support from the North Carolina State Health Department, we initiated a survey of rural residents in eastern North Carolina. Reports of odor problems and respiratory effects had been coming in from hog CAFO neighbors across eastern North Carolina, and the State Health Department was interested in obtaining more information. To our knowledge, only one small study, from Iowa, had been published on respiratory health effects among swine CAFO neighbors (18). In consultation with our community partners and staff from the State Health Department, we designed a survey to compare health and quality of life of residents of three communities, one in the neighborhood of a hog CAFO, one in the neighborhood of a dairy operation that used a liquid waste management system, and a third with no intensive livestock production.

## Design and Conduct of the Health Survey

Designing the study presented a number of challenges. Our environmental justice analyses were, by then, confirming the observations of community members that hog CAFOs are disproportionately located in low-income and African-American communities. We would need to ask for the participation of people whose past experiences led them to distrust health departments, medical providers, universities, or researchers. The relationships with community-based organizations that we had established in our environmental justice project would be essential for collecting reliable data and establishing a high response rate in defined populations in the three areas. At the same time, we knew that to avoid potential biases that could be introduced by community participation in areas divided between those with negative feelings about the hog industry and those whose livelihood depends on the industry, we would need to insulate the data collection process from peer pressure or leading questioning. Quantification of individuals' exposures to hog CAFO emissions, a key component in establishing dose-response relationships, would be extremely expensive; furthermore, even if we could afford to make

environmental measurements, it was not clear which of the many hazardous agents present in odorous plumes are most relevant to health effects. Clinical confirmation of symptoms would also be desirable; however, severe responses to air pollution episodes are too uncommon to evaluate statistically in small populations, and poor access to medical care could lead to underestimation of problems. We debated carefully whether it would be ethical to conduct a study if we could not measure exposures and outcomes sufficiently well to detect a health effect if one existed, recognizing that our design would be constrained by funding that could be provided by the State Health Department. Our decision to proceed was influenced by evidence from previous studies and by community members and state officials who felt an urgent need for respiratory health data from North Carolina.

We developed a structured symptom questionnaire based on previous studies and input from eastern North Carolina residents who helped us use culturally appropriate language. We used the same questions in each of the three communities, and included no questions about odor, hogs, or livestock because one community had no livestock. We chose three communities with similar demographic characteristics according to census data. In each community, we conducted a household census, noting each occupied dwelling on a map and assigning a code to the residence (20).

We collaborated with a community-based organization in each area. Community members helped us locate roads and houses, and they served as community consultants during the data collection. Trained interviewers from UNC visited households in each area, accompanied by a community consultant who made the initial introduction of the researcher. Interviews were conducted without the presence of the community consultant unless the participant requested that the consultant remain. The interviewer read aloud, and provided the study participant with a copy of, an "Agreement to Participate" that explained that the study was about environmental exposures and health of rural residents. Participants were assured that their responses would be kept confidential and that their name would not be written on the questionnaire, although a link would be maintained between their address and responses. UNC's IRB gave us permission to obtain oral consent because we used no interventions or sensitive questions, and because a signed consent form would have been the only record of a person's name.

In the two livestock communities, interviewing teams visited households nearest the CAFOs first and then visited households in

order, moving away from the CAFO, until they reached our target sample size of 50, with one adult in each household interviewed. Data collection took place in January and February 1999. We completed 155 interviews, with a refusal rate of 14%. Respondents were 92% African American and 65% female, and 27% were 65 years old or older (20).

In mid-April 1999, before submitting our report to the State Health Department, we invited members of the three community-based organizations to a meeting to discuss our initial findings. We obtained input from community members and responded to questions and concerns about excesses of respiratory and digestive symptoms that had been reported by hog CAFO neighbors compared with residents of the other communities. Community members decided at this meeting that they did not want the names of their communities to be included in our report. We therefore removed from our report any data on numbers of households, population size, race, and income characteristics of the census block groups in the study. These characteristics had been used to match communities in the study, but the figures could have been used by others to deduce the identities of the communities. We also removed from the report any exact information about the size of the hog and cattle CAFOs, which had been derived from Department of Water Quality permit data, and replaced the numbers with approximate figures.

At the end of April, we submitted a draft report to the State Health Department. Our analyses showed that the frequency of miscellaneous symptoms such as muscle aches and vision and hearing problems was similar in the three communities. In contrast, residents near the hog CAFO reported increased numbers of headaches, runny noses, sore throats, excessive coughing, diarrhea, and burning eyes. They also reported many more occasions when they could not open windows or go outside even in nice weather. The report was reviewed by State Health Department staff, the chief statistician for the State Center for Health Statistics, the chair of the UNC Department of Epidemiology, and others. Our final report incorporated their comments.

## The Pork Industry Response

The State Health Department issued a press statement releasing our report to the public on 7 May 1999. Later that day, attorneys for the North Carolina Pork Council wrote to my coauthor, Susanne Wolf, and me requesting that we

make available for copying by this office any and all documentation in your possession (or that you are aware of in the possession of other State agencies or State personnel) that contain, represent, record, document, discuss, or otherwise

reflect or memorialize the results of the Study or any conclusions or recommendations that you or any local, state or federal agency might draw from the Study or any other matter discussed in the Report, including, without limitation, the studies of the three communities referred to in the Release; any notes or other records from any site visits or interviews made during the course or as a part of the Study; any sampling, testing or other analysis that was performed as a part of the Study; any calculations, research, or other work papers that reflect any analysis that you or others made from or using the data collected as a part of the Study; any contracts or other similar documents that define the Study or any having to do with payment for the study; the identities of all persons who worked on or contributed to the Study (including persons interviewed); and any other documentation that were generated as a part of or in the course of the Study.

This request was made under the North Carolina Public Records Statute, which defines a public record as all

documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

The North Carolina Public Records Statute does not protect documents collected in the course of research involving human subjects and requires public officials, defined to include university faculty, staff, and graduate assistants who work for pay, to turn over records in a timely manner. The letter also stated that attorneys for the Pork Council would evaluate whether any of our statements were defamatory. Finally, the letter stated:

it is imperative that we be given access to those documents no later than Wednesday, May 12. If we are not granted access to those documents in a timely manner, we have been directed to prepare an action for filing in the appropriate division of the General Court of Justice, pursuant to N.C. Gen. Stat. §132-9, for an order compelling disclosure or copying of those records and to seek such other remedies as are available for those statutes.

The Pork Council request raised a number of concerns. First, I was obligated to protect the confidentiality of participants. My name and contact information appeared on the Agreement to Participate that had been given to each participant. Although we did not record participants' names, we did have maps of the locations of their homes linked to their responses by a randomly assigned study number. Even without the maps, information about participants, including age, race, sex, occupation, industry, number in household, water source, and responses to questions about health status, was certainly

sufficient to deduce which individuals from a particular area were in the study in these sparsely populated rural communities.

Breach of confidentiality was a concern not only from a legal and ethical standpoint. The community trust upon which our research depended would be seriously compromised as well, potentially destroying valued professional and personal relationships and threatening the continuation of research into exposures and health of neighbors of swine CAFOs. Given my professional and institutional position, I could not expect a second chance. Furthermore, if I violated my agreement with participants I could be branded, across the state and in other regions where there is a growing network of communities affected by corporate swine production, as untrustworthy.

The pork industry responded not only to the university but also to our federal funders. Shortly after receiving the letter from the Pork Council attorney, I received a message from the official at NIEHS in charge of the environmental justice grant program: "I've had a request to put together a summary of your project. Do you have any relevant health effects data available? I have been asked to do this ASAP so any help you can provide will be greatly appreciated." He further explained that "this request has to do with a congressional inquiry" and that "we may have to provide records under the Freedom of Information Act." I interpreted this as an effort of the industry to challenge federal support for our research, and responded by sharing with NIEHS the letter from the Pork Council attorney and suggesting that material from our annual report be used to respond to the request. There were no further requests from NIEHS.

Although the primary purpose of the Pork Council's request appeared to be harassment and intimidation, the request related to an important and legitimate part of scientific inquiry: the ability to replicate findings and evaluate evidence independently. In fact, I had recently conducted an independent reevaluation of environmental health effects using data from a study that had been designed and conducted with funding from industry (21–23). Just as some community members in that case were concerned about conclusions from an industry-funded study, now an industry group was concerned about findings from a study that was conducted with community participation. To evaluate the quality, internal consistency, and analytical methods in our rural health survey, the industry would need to be able to conduct an independent reanalysis. The need to protect confidentiality would have to be considered in relation to a scientific culture in which reanalysis is essential

and in relation to power inequalities between industry and the exposed communities.

The university attorney, who had been copied on the Pork Council attorney's letter, explained to me that North Carolina law required us to turn over all documents related to the study as quickly as possible. Because this would have violated our agreement with study participants, I consulted with the chair of our IRB and other university officials. One administrator told me that if I refused to turn over documents as directed by the university attorney, the university "would call the SBI [State Bureau of Investigation] and have me arrested for stealing state property." We discussed withholding documents on the grounds that their release would have a chilling effect on future research, and on grounds that we would be violating the confidentiality promised in the Agreement to Participate. The administrators were not hopeful that these arguments would be accepted, and in any case deferred to the university attorney on making a final decision.

In June, the university attorney agreed to release records to the Pork Council, including computerized files of individual responses, interviewer training instructions, draft copies of our report, other statistical tabulations, and study related correspondence, including electronic mail messages of all project staff. To protect confidentiality of the participants and the communities, the university attorney agreed that we should withhold any information that could lead to disclosure of where the study was done, including maps, driving instructions, and any references in our communications or study materials to locations or names of persons that would identify locations in the study. We reasoned that no individuals could be identified, even with information in the survey, unless the locations of the survey were known. Staff members and I spent considerable time in assembling and redacting documents. In the presence of the rural health survey project director and other staff, an attorney for the Pork Council reviewed the documents and copied many of them. They continued until August to request information that we had withheld and then ceased to express interest.

In July 1999, I was invited by the State Health Department to present findings of our study at a conference on the public health impacts of intensive livestock operations. The conference was held at North Carolina State University in Raleigh, which has the Animal and Poultry Waste Management Center, a veterinary school, and other programs related to industrial agriculture. A number of pork producers attended the conference and posed hostile questions after my presentation. Later, I was approached by an assistant professor



from another UNC-system institution, who told me, "I have been conducting research on neighbors of hog operations, but I'm afraid that if I have to deal with legal problems like yours, I'll never get tenure. So I've decided to drop my research for now."

### The Sustainable Hog Farming Summit

In the fall of 2000, I accepted an invitation to speak about our environmental justice and public health research at a conference being organized by a coalition of independent farmers, environmentalists, and grassroots organizations billed as the "Sustainable Hog Farming Summit." The conference was scheduled for January 2001 in New Bern, North Carolina. On 8 December, I was copied, along with the Dean of the School of Public Health and the UNC Chancellor, on e-mail correspondence from the UNC Associate Vice Chancellor for Government Relations. Staff in the UNC system president's office had written to the Associate Vice Chancellor:

We have received several questions and complaints from legislators and others—received through different offices in the University—about the Sustainable Hog Farming Summit announced for Thursday, January 11, 2001 at New Bern.... Five faculty members at three different UNC institutions show on the Summit agenda as program participants (moderators or panelists). I've been asked whether those faculty members are representing themselves or the universities where they are employed, are attending on university time or their own, and whether they are paying their own expenses or is someone else (presumably meaning the university or the conference sponsors).

During 15 years on the UNC faculty I had presented research at scores of meetings but had never before been asked to account for myself in this way. The associate vice chancellor described a senior member of the North Carolina Senate who "had concerns about Carolina's [UNC's] 'involvement' with the program." She also described a conversation with two Pork Council lobbyists "whom I consider to be friends" and reported that "they are fully cognizant of the fact that we cannot and will not censure our faculty." I responded to the administrators by explaining that I was appearing as a university employee to present my research, and that I would be funded by our environmental justice research and education grant.

### Social and Ethical Responsibilities of Researchers

Environmental health research can influence conflicts between communities of low income or people of color and the institutions that derive benefits (profits, federal and

state funding or services, avoidance of wastes) from the activities and policies that burden these communities. Researchers, most of whom work in relatively privileged institutions, are placed in situations of conflicting loyalties if they conduct research in collaboration with, or on behalf of, communities burdened by environmental injustices. These conflicts can threaten the self-interest of researchers and may raise social and ethical issues that do not typically arise in research projects that respond to the agendas of institutions.

### Principles of Research Design

Before addressing some of these conflicts as they apply to our case, it is important to be clear that researchers performing community-driven environmental health research should not encounter conflicts over the logic used to design research. Our scientific culture values expert opinion and standardized, replicable techniques over lay opinion and observation. Because observations of community members do not "count" in the scientific literature used by policy makers and courts, researchers can maximize their service to communities by devising standardized procedures, including data collection and measurement techniques, that comport with professional standards, even as we may need to change those standards to improve science. First among our considerations should be to conduct studies that have the sensitivity to detect an effect if one exists. The ability to detect no effect when one does not exist is also important, although in the case of community-driven environmental health, researchers must carefully distinguish "no effect" for a specific biologic end point from "no effect" in an ecologic context that encompasses social, psychologic, and economic impacts.

The challenge for researchers is to work with community members to frame questions, and design procedures to produce answers, that respect community concerns by investigating them with the best technical approaches possible, including newly devised methods to enhance community input and analyze data. Results of these investigations will be useful to communities burdened by environmental problems because such research can address topics that could not be investigated without the technical resources of institutions, and because the findings can be used in situations where community observations are not valued. Rather than facing a conflict between standard procedures and alternatives that are acceptable to the community but viewed as "unscientific" by scientists, both researchers and community members benefit from negotiating the use of rigorous methods.

### Responding to Government, Industry, and the Media

In responding to concerns and inquiries from the state legislature, university administration, and federal granting agency, I might have distanced myself from the communities living with hog CAFOs and their allies. Instead, I kept them informed. This strategy had two effects. First, I maintained the trust of the communities who had been instrumental in identifying research questions, conducting fieldwork, and educating the public about our findings. This trust would continue to be essential if we were to address additional research questions. Second, the communities responded by appearing at the legislative hearing, giving advice on acceptable means of responding to the public records request, helping to identify external legal support, and providing strong encouragement and support. If I had backed away from the community under institutional pressure, not only would I have compromised relationships essential to conducting high-quality research, our research partnership would have lost support of an outside constituency at the very time when it was most needed.

Some academics are reluctant to interact with the media. They feel that their findings are misrepresented and misunderstood and that interviews take considerable time and have little potential to influence scientific publications or grant funding, the criteria that matter most for career advancement. However, community-driven researchers have responsibilities regarding publication of scientific findings, making those findings public in appropriate ways, and participating in processes involving the media and policy makers (24,25). Environmental health findings can help exposed community members protect themselves, can motivate participation in democratic processes, and can influence public opinion and policy makers. Researchers have an obligation to be involved in targeted efforts to inform affected communities about research results as well as to participate in activities that have a wider audience (24). These activities must be conducted in partnership with affected communities.

Researchers have a responsibility to report findings of studies even when they can be expected to produce negative reactions from industry, government, or universities. Publications are a key goal of researchers seeking to compete for positions and grant funding in an entrepreneurial environment. However, when research sheds light on institutional discrimination, environmental contamination, or health effects that could create legal problems for institutions that provide jobs and funding to researchers, researchers



may be motivated to withhold or delay publication, or to provide benign interpretations even when there is evidence of harm. Such actions fail to meet responsibilities to research participants, exposed communities in the study area and elsewhere, policy makers, and researchers working on the same or related problems.

## Respecting Interests of Individuals and Communities

Our experiences with the public records act request have similarities with cases of other researchers whose records have been subpoenaed in law suits involving large corporations (26–30). Tobacco, oil, and pharmaceutical industries have sought and obtained research records that university investigators had assumed would be protected by confidentiality requirements. Furthermore, it cannot be presumed that university administrators will take a strong advocacy role in protecting research records or faculty members (26,27). Our compromise, revealing responses but not locations of the respondents, was based on the assumption that both pieces of information would be required for deductive disclosure of the identity of participants through age, sex, race, occupation, and household characteristics. This compromise was accepted by the university attorney despite the concern that the university might have to go to court to protect the identity of communities. However, given the complexities of deductive disclosure from a statistical as well as an ethical standpoint, it is inappropriate for a researcher and an attorney, especially under threat of litigation, to make the final decision about release of data. Researchers and institutions faced with similar decisions should consult a panel, possibly an IRB or a committee of an IRB, that includes a statistician, community members, and others experienced in protection of human subjects.

A more fundamental problem is that IRBs are concerned only with protecting individual research participants. In our research, we were also concerned with protecting the communities where the research was conducted. The presence of industrial hog operations has split communities between those who depend on the industry for income and those whose quality of life and health have been adversely affected (31). In some areas, community members have been fearful of participating in research because of the influence of the hog industry in local affairs. One resident told us, “If you want to do a survey in this community, you’d better finish on the first day, because you won’t be able to come back.” We were also advised not to call the sheriff’s department if we had trouble on the road. Several community members who have publicly opposed the industry told me that they have

been followed and threatened, and that they carry weapons for their own protection.

In 1998, attorneys for a hog grower wrote to Elsie Herring, a North Carolina woman who had requested help from local and state public health officials regarding spraying of hog waste that drifted onto her and her mother’s homes and cars (32). The attorneys threatened to sue Herring and impose a restraining order if she persisted in her requests for assistance. “If you violate any such restraining order,” the letter stated, “we will ask the court to put you in prison for contempt.” At the Sustainable Hog Farming Summit, Herring reported that the grower blocked passage of her car on the road to her mother’s house, and that he entered her mother’s home without invitation, shouted at her mother, and shook her as she sat in her chair. Herring’s mother was in her 90s.

On 11 September 1995, Dana Webber reported in the *Wilmington Star* (33) that two residents of Duplin County, North Carolina, who had publicly opposed industrial hog production became concerned for their jobs after their supervisors were contacted by representatives of Murphy Farms, then the largest hog producer in the world. Although both left their jobs, “not solely because of Murphy’s intimidation tactics,” one of the workers said, “It’s a mind game. This pork industry has got people scared thinking that they’re so big and strong and that we can’t do without them.” According to Webber, “Duplin County officials contend that people in the county have complained to them about the kind of intimidation tactics [the workers] describe.”

In this adversarial climate, the very choice of research topics almost invariably involves taking sides, whether it is research on environmental health or waste management technology. Human subjects are not the only ones at risk in public health research; community organizations that cooperate with researchers, community consultants who facilitate contacts between researchers and human subjects, family members, and others may reasonably fear intimidation and threat. Furthermore, communities that host facilities widely known for repellent odors may fear stigmatization if their identities are known. Researchers working on environmental health issues in the area of environmental injustice need to consider not only their obligation to individual human subjects but also their social responsibilities to entire communities (5,34).

## Conclusions

Most researchers are accustomed to full-time employment with health insurance, pension benefits, and wages that afford housing in

neighborhoods with access to clean water, sewerage, adequate schools, and medical facilities and that are free from major sources of environmental contamination. For us, antagonism from an industry that is threatened by environmental health research, or the question of support from our own institutions, can be very disturbing. However, these problems pale in comparison with the situations of people who live every day in a contaminated environment, unable to enjoy their homes and neighborhoods, unable to sell their property (if they are owners), fearful for their own health and the health of their family members. Although I have focused on the perspectives of an epidemiologist working on community-driven research, it is important to emphasize that researchers may choose to walk away from pollution and conflict; most community members who live with discrimination, pollution, and conflict have no choice but to accept or to fight injustice.

## REFERENCES AND NOTES:

1. St. George D, Schoenbach V, Reynolds G, Nwangwu J, Adams-Campbell L. Recruitment of minority students to U.S. epidemiology degree programs. *Ann Epidemiol* 7:304–310 (1997).
2. Thomas S, Quinn S. The Tuskegee Syphilis Study, 1932 to 1972: implications for HIV education and AIDS risk education programs in the black community. *Am J Public Health* 81:1498–1504 (1991).
3. Brown P. Race, class, and environmental health: a review and systematization of the literature. *Environ Res* 69:15–30 (1995).
4. Thu K. Agriculture, the environment, and sources of state ideology and power. *Cult Agric* 23:1–7 (2001).
5. Rose G. High-risk and population strategies of prevention: ethical considerations. *Ann Med* 21:409–413 (1989).
6. Economic development for Tillery. The Circular [Scotland Neck, NC]. 18 December 1991; 3.
7. Schwebke S. Hog firm buys land near Tillery. *The Daily Herald* [Roanoke Rapids, NC]. 19 August 1992; 1.
8. Thu K, Durrneberger E, eds. *Pigs, Profits, and Rural Communities*. Albany, NY:State University of New York Press, 1998.
9. Furuseth O. Restructuring of hog farming in North Carolina: explosion and implosion. *Prof Geogr* 49:391–403 (1997).
10. Cecelski D, Kerr ML. Hog wild. *South Expo* 20:9–15 (1992).
11. Wing S, Grant G, Green M, Stewart C. Community based collaboration for environmental justice: south-east Halifax environmental reawakening. *Environ Urban* 8:129–140 (1996).
12. Bullard R. Environmental justice for all. In: *Unequal Protection: Environmental Justice and Communities of Color* (Bullard R, ed). San Francisco:Sierra Club Books, 1994;3–22.
13. Edwards B, Ladd A. Environmental justice, swine production and farm loss in North Carolina. *Sociol Spectrum* 20:263–290 (2000).
14. Cole D, Todd L, Wing S. Concentrated swine feeding operations and public health: a review of occupational and community health effects. *Environ Health Perspect* 108:685–699 (2000).
15. Gamble VN. A legacy of distrust: African Americans and medical research. *Am J Prev Med* 9:35–38 (1993).
16. Wing S. Whose epidemiology, whose health? *Int J Health Serv* 28:241–252 (1998).
17. Schiffman S, Sattell Miller E, Suggs M, Graham B. The effect of environmental odors emanating from commercial swine operations on the mood of nearby residents. *Brain Res Bull* 37:369–375 (1995).
18. Thu K, Donham K, Ziegenhorn R, Reynolds S, Thorne P, Subramanian P, Whitten P, Stookesberry J. A control

- study of the physical and mental health of residents living near a large-scale swine operation. *J Agric Safety Health* 3:13–26 (1997).
19. Wing S, Cole D, Grant G. Environmental injustice in North Carolina's hog industry. *Environ Health Perspect* 108:225–231 (2000).
20. Wing S, Wolf S. Intensive livestock operations, health, and quality of life among eastern North Carolina residents. *Environ Health Perspect* 108:233–238 (2000).
21. Wing S, Richardson D, Armstrong D, Crawford-Brown D. A reevaluation of cancer incidence near the Three Mile Island nuclear plant: the collision of evidence and assumptions. *Environ Health Perspect* 105:52–57 (1997).
22. Wing S, Richardson D, Armstrong D. Reply to comments on "A reevaluation of cancer incidence near the Three Mile Island" [Letter]. *Environ Health Perspect* 105:266–268 (1997).
23. Wing S, Richardson D, Armstrong D. Response: Science, public health and objectivity: research into the accident at Three Mile Island. *Environ Health Perspect* 105:567–570 (1997).
24. Sandman PM. Emerging communication responsibilities of epidemiologists. *J Clin Epidemiol* 44:41S–50S (1991).
25. Viel J, Wing S, Hoffmann W. Environmental epidemiology, public health advocacy, and policy. In: *Disease Mapping and Risk Assessment for Public Health* (Lawson A, Biggeri A, Boehning D, Lesaffre E, Viel J, Bertollini R, eds). Chichester, England: Wiley & Sons, 1998;295–299.
26. Fisher PM. Science and subpoenas: when do the courts become instruments of manipulation? *Law Contemp Prob* 59:159–167 (1996).
27. Picou JS. Compelled disclosure of scholarly research: some comments on "high stakes litigation." *Law Contemp Prob* 59:149–157 (1996).
28. Traynor M. Countering the excessive subpoena for scholarly research. *Law Contemp Prob* 59:119–148 (1996).
29. Picou JS. Toxins in the environment, damage to the community: sociology and the toxic tort. In: *Witnessing for Sociology: Sociologists in Court* 211 (Jenkins PJ, Kroll-Smith S, eds). Westport, CT: Praeger, 1996;212–224.
30. Picou JS. Sociology and compelled disclosure: protecting respondent confidentiality. *Sociol Spectrum* 16:209–237 (1996).
31. Snell M. Downwind in Mississippi: the struggle to keep a community from going to the hogs. *Sierra March/April*:22–26 (2001).
32. Herring E. Personal communication.
33. Webber D. Two critics say hog industry leaned on their bosses. *Wilmington Star* [Wilmington, NC], 11 November 1995: 1B.
34. Coughlin SS. Environmental justice: the role of epidemiology in protecting unempowered communities from environmental hazards. *Sci Total Environ* 184:67–76 (1996).

## **Exhibit 11**

**To:** Lombardo, Smithfield\_Keira[klombardo@smithfield.com]  
**Cc:** gary[gary@garypearcenc.com]; Kirkham, Kathleen[kkirkham@smithfield.com]; Butler, Don[dpbutler2@smithfield.com]; joyce[joyce@fitzpatrickcomm.com]; JBritt[jbritt@mwcllc.com]  
**From:** Butler, Don  
**Sent:** Tue 8/25/2015 1:08:27 AM  
**Subject:** Re: communications call agenda

I will be with Senator Tillis tomorrow morning doing farm/plant tours and will not be available for the call. Deborah Johnson will be with us on the tour.

Don

Sent from my iPhone

On Aug 24, 2015, at 8:58 PM, Lombardo, Smithfield\_Keira <[klombardo@smithfield.com](mailto:klombardo@smithfield.com)> wrote:

Need to add draft responses to recent media coverage.

Keira Lombardo  
Senior Vice President of Corporate Affairs

(b) (6)  
Privacy, (b)  
[klombardo@smithfield.com](mailto:klombardo@smithfield.com)

**Smithfield**  
*Good food. Responsibly.*  
Smithfield Foods  
200 Commerce Street  
Smithfield, VA 23430  
[www.smithfieldfoods.com](http://www.smithfieldfoods.com)

**From:** Gary Pearce  
**Date:** Monday, August 24, 2015 at 2:58 PM  
**To:** "Lombardo, Smithfield\_Keira", "Kirkham, Kathleen", "Butler, Don", Joyce Fitzpatrick, Jeffrey Britt  
**Subject:** communications call agenda

Reminder of 10:30 call. NCPC and NCFF will join at 11. Our call agenda:

- Media coverage – Dennis T concern
- Branch/Herring info and strategy
- Renewables update
- Ad agency update

MB100103000066

- Keira: response to employee question
- Other items

(b) (6) Privacy, (b) (7)  
(C) Personal Privacy

Gary Pearce

(b) (6) Privacy, (b) (7)  
(C) Personal Privacy

[www.talkingaboutpolitics.com](http://www.talkingaboutpolitics.com)

## **Exhibit 12**



## Prestage Farms, Inc.

May 18, 2016

RE: *North Carolina Farm Families* Request for support

Please find the enclosed letter from *North Carolina Farm Families* (NCFF) regarding their campaign to defend our industry. By now, many of you will have seen the *North Carolina Farm Families'* commercials on TV, heard the accompanying radio advertisements, or engaged with the group on social media. As stated in their letter, we, along with other area integrators and the North Carolina Pork Council, have pledged half of the money needed to run this comprehensive media campaign, but more funding is needed. NCFF is reaching out to everyone who works in the pork industry from the integrators and producers to those in allied industries that supply us with goods and services. We will all be negatively affected if the Waterkeepers are successful in their efforts to stop our way of life.

NCFF has asked that we share their information with you and encourage you to give at whatever level you are comfortable with to support this worthy cause. Attached is a contribution form with a suggested contribution based on your farm(s)' estimated cumulative steady-state-live-weight (SSLW). If an owner has multiple sites, then the suggested amount is based on the cumulative total SSLW for all sites. However, if a site has multiple owners, the amount is for that site and should be divided among the owners. If you choose to give, you may choose to remit a one-time contribution by check made payable to North Carolina Farm Families OR you may sign the attached remittance form authorizing us to deduct your contribution from your upcoming grower payments. Please attach this commitment form when sending your remittance, regardless of which payment option you choose and mail the signed commitment form/check back to the Prestage office using the enclosed self-addressed stamped envelope. If paying by check, please feel free to remit your payment directly to NCFF: P.O. Box 61, Kenansville, NC 28349.

Thank you for your time, consideration, and ultimately your support. If you have any questions, please do not hesitate to contact either Summer Lanier (910) 596-5832 or Lynn Kersey (910) 596-5775 for assistance.

Sincerely,



Zack McCullen, III  
Vice President - Swine Division

To view Ads and Learn More, Visit:

[www.ncfarmfamilies.org](http://www.ncfarmfamilies.org)

[www.waterkeeper.org](http://www.waterkeeper.org)

## Contribution Form

Farm Name(s): \_\_\_\_\_

Estimated Steady State Live Weight (cumulative total of all sites)\*: \_\_\_\_\_

Suggested Contribution (based on SSLW)\*\*: \$ 500.00

\*If an owner has multiple sites, then the suggested amount is based on the cumulative total SSLW for all sites. However, if a site has multiple owners, the amount is for that site and should be divided among the owners.

\*\*SSLW suggested contribution ranges: 0-499,999lbs - \$250, 500,000-999,999lbs - \$500, 1,000,000lbs+ - \$1000

Pledged Contribution:

When making a commitment, please use this form and select one of the two options below:

\_\_\_\_\_ **Option 1:** Remit your contribution by check payable to *North Carolina Farm Families*

If you send the check to Prestage in the enclosed envelope, we will send it on directly to NCFF. If you prefer, please feel free to remit your payment directly: NCFF, P.O. Box 61, Kenansville, NC 28349.

\_\_\_\_\_ **Option 2:** Sign below authorizing us to deduct your contribution from your upcoming grower payments.

If you opt to have Prestage deduct your contribution from your grower payments, please **choose one** of the following:

- ☐ Deduct a **single, one-time**, payment for the full amount.
- ☐ Divide contribution into **equal installment payments**.
  - If you are a sow grower, commitment installment payments will be deducted from grower payments over 6 months.
  - If you are a nursery/finishing grower, commitment installment payments will be deducted over 2 turns.

I, \_\_\_\_\_, wish to contribute \$\_\_\_\_\_ to *North Carolina Farm Families*. By signing below, I authorize Prestage Farms to deduct equal installments from each of my grower payments until such time that the full amount is collected as stated above.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

*Please attach this commitment form when sending our remittance regardless of option chosen. Mail signed commitment form/check back to us using the enclosed self-addressed, stamped envelope.*

***Thank you in advance for your contribution!***

Please remember, N.C. Farm Families is a 501(c)(6) organization so contributions from businesses may be tax-deductible. Contact your tax advisor to be sure your contribution qualifies.

HIGHWAY 421 SOUTH • P.O. BOX 438 • CLINTON, NC 28329-0438 • PHONE (910) 592-5771



NC Farm Families  
P.O. Box 61  
Kenansville, NC 28349  
[www.NCFarmFamilies.com](http://www.NCFarmFamilies.com)

May 18, 2016

Hog farming is under attack – by a coalition of powerful groups led by Robert Kennedy, Jr.'s Waterkeeper Alliance. To be blunt, these groups have one goal: To shut down every hog farm in North Carolina.

Last summer, we organized North Carolina Farm Families to fight back. I am honored to help lead this effort. The entire pork industry has united behind North Carolina Farm Families. And we need you to stand with us.

To answer the Waterkeeper attacks:

- Farm Families has already spent \$2 million to run ads all across North Carolina – on television, radio, newspapers and the Internet – giving people the facts about hog farming. (You can see our ads here: [www.ncfarmfamilies.com](http://www.ncfarmfamilies.com))
- Held rallies in Kenansville – and on the State Capitol grounds in Raleigh – that were attended by thousands of farmers and their friends and families.
- Collected more than 11,000 signatures on petitions supporting hog farmers and presented the petitions to the Governor.

Our internal polling shows that the ads are changing public opinion in hog farmers' favor. After our first TV ads, polling found that 67 percent of North Carolinians say hog farms have a positive impact on the state.

You may have seen the Waterkeeper Alliance billboards in eastern North Carolina claiming – falsely – that hog farms are polluting our waterways and killing our fish. Groups affiliated with the Waterkeeper Alliance, which is based in New York City, are repeating those claims daily in private conversations, public meetings and posts on social media. And our opponents are taking their attacks to the news media:

- Last month, NPR in Virginia broadcast a five-part series filled with attacks on hog farming.
- The Wilmington, NC NPR affiliate is planning its own series about the industry.
- National publications have even run stories linking hog farming to the water pollution crisis in Flint, Michigan – and accusing our industry of racism.

The total cost of our statewide media campaign – over eight months – is \$4 million. Already, several companies and the N.C. Pork Council have contributed a total of \$2.25 million. Here's the bottom line: We need the help of you – and other supporters of the industry – to raise the remaining \$1.75 million. We will follow up with you personally to brief you in detail about our plans. And we will ask you to support North Carolina Farm Families with a financial contribution.

Our opponents have a simple but blunt message: Hog farming is destroying North Carolina's rivers. And, according to our polling, their attacks will do a lot of harm – unless they are answered by facts. Last summer, our industry came together to do just that. And, in February, we began our statewide media campaign.

If our opponents succeed in their goal, the damage to our industry and to our economy will be devastating. Hog farmers are in the fight of our lives. And we need your support – and especially your financial support.

Join our fight. Thank you for your consideration and your support.

Ed Emory  
President, NC Farm Families